134-136

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1521.

CHARLES H. WIGHT, APPELLANT,

vs.

JOSEPH H. NICHOLSON, SUPERINTENDENT OF THE DETROIT HOUSE OF CORRECTION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED DECEMBER 3, 1889.

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a In the Supreme Court of the United States.

On appeal from the circuit court of the United States for the eastern district of Michigan.

In the Matter of the Petition of CHARLES H. WIGHT for a Writ of *Habeas Corpus*.

It is hereby stipulated between the undersigned, Henry M. Duffield, attorney for petitioner and appellant, and Cyrenius P. Black, United States district attorney, that the clerk may prepare the printed record for the court as follows, viz:

By printing the following papers:

The petition and the exhibits annexed, viz., the indictment, the motion to quash, the motion for a new trial, the defendant's requests to charge, the motion in arrest of judgment, the order of the district court remitting the cause into the circuit court, the entry of the argument of the motions in the circuit court, the denial of the motions in the circuit court, the sentence of the prisoner in the district court, omitting the printing at length of the testimony attached to the petition, which is hereafter stipulated to be printed in the certificate of the court.

Also the order of Mr. Justice Harlan upon the petition, the rule issued thereon, the return of Joseph Nicholson, the
b order adjourning the case, the protest and objection of the petitioner to the same, the order for a writ of *habeas corpus*, the return of Joseph Nicholson thereto, the protest and objection of the petitioner thereto, the order discharging the writ, the objections of the petitioner to that order, the certificate of the court, but omitting therefrom the printing again at length (because already stipulated to be printed) of the indictment; the motion to quash, the plea, the motion for a new trial, the defendant's request to charge, the motion in arrest of judgment, the order certifying the case to the circuit court, the entry of the sentence in the district court, the transcript of record from the district court to the circuit court, including another copy of the indictment; the motion to quash, the plea, the trial and verdict, the motion for a new trial, the requests to charge, the motion in arrest of judgment, the order certifying the cause to the circuit court, the entry of the argument of the motions and the denial of the motions. The clerk will also please omit to print in full all formal certificates of the clerks of the circuit and district court and proofs of service and returns wherever they may appear.

The clerk will also print as part of the certificate of the court to follow the words "in this matter was passed" and before the words "petitioner's counsel," in the second line of page 133 of the manuscript record, the testimony attached to the petition, printing of which was heretofore stipulated to be omitted from exhibits to the petition and contained in manuscript record, pp. 31 to 75, in-
c clusive, and the order *nunc pro tunc* as entered in the circuit court, but will not print again the order *nunc pro tunc* as en-

tered in the district court and offered in evidence by the district attorney on pages 157, 158, and 159 of the manuscript record or the order allowing the appeal, provided, however, that the printed record shall mention every paper the printing whereof is omitted, and shall wherever any paper, except a formal certificate, affidavit, order, or return is omitted, contain these words:

"Printing of (giving name of paper omitted) omitted by stipulation; see page — (giving number of page where the omitted paper is printed); and provided also that this stipulation shall be printed at length at the beginning of the printed record."

HENRY M. DUFFIELD,
Att'y for Petitioner & Appellant.
C. P. BLACK,
U. S. Dist. Attorney.
O. W. CHAPMAN,
Solicitor General.

d [Endorsed:] Supreme Court U. S., 1889. Oct'r term. No. 1521. Charles H. Wight, appellant, *vs.* Jos. H. Nicholson, superintendent, &c. Stipulation as to printing record.

[Stamped:] Office Supreme Court U. S. Filed Dec. 11, 1889. James H. McKenney, clerk.

1 & 2 *Petition for Writ of Habeas Corpus.*

To the judges of the Supreme Court of the United States:

The petition of Charles H. Wight, who is a citizen of the State of Michigan and a resident of the eastern district thereof, respectively represents unto your honors that before and during June, 1888, he was an employee in one of the departments of the postal service, viz., as an assistant to the superintendent of carriers in the United States post office at Detroit; that at the June term of the year 1888 he was indicted in the district court of the United States for the eastern district of Michigan for "unlawfully secreting and embezzling certain letters" alleged to have "come into his possesion in the regular course of his official duties, and which were intended to be carried by a letter-carrier;" and also for "unlawfully and wrongly stealing and taking out of certain letters which had come into his possession in the regular course of his official duty certain valuable things" (a certified copy of which indictment is hereto annexed, marked Exhibit "A").

That on the 30th day of November, A. D. 1888, he filed a motion to quash said indictment, a copy of which is hereto attached, marked Exhibit "B;" but the court proceeded, without disposition of same, to a trial of his case upon his plea of not guilty, which was put in after filing of said motion to quash, and on said day, to wit, November 30th, 1888, he was tried and a verdict rendered of guilty under all the counts of said indictment except the sixth and seventh; that on the first day of December, A. D. 1888, his counsel moved for

a new trial, and also in arrest of judgment (copies of which motions are hereto attached, marked Exhibits "C" and "D").
3 Said motions were argued in part on the 10th day of December, A. D. 1888, before the Honorable Henry B. Brown, judge of the United States district court for the eastern district of Michigan, and on the 17th day of December, 1888, the argument thereof was concluded and the matter submitted; that subsequently and on the 29th day of January, A. D. 1889, said judge of said United States district court, of his own motion and without any application from the United States district attorney, entered an order certifying said cause to the circuit court of the United States for the eastern district of Michigan (a certified copy of which is hereto attached, marked Exhibit "E"), and a re-argument of said motions was ordered before said circuit court, composed of the Honorable Howell E. Jackson, circuit judge, and the Honorable Henry B. Brown, district judge; that on the 15th day of February, 1889, a certified transcript from the district court was filed in the circuit court, and on the 11th day of March, A. D. 1889, said re-argument was had before the judges aforenamed in said circuit court of the United States, and on the 12th day of March, A. D. 1889, both said motions were overruled and denied; that no other proceedings were had and no other entry was made on the record of the circuit court of the United States than those of which certified copies are hereto attached, marked Exhibit "F;" but on said 12th day of March an order was entered in the district court of the United States vacating the order remitting the cause to the circuit court of the United States and overruling both of the motions for a new trial and in arrest of judgment (a
4 certified copy of which is hereto attached, marked Exhibit "G"); and thereupon your petitioner was sentenced by said district court of the United States for the eastern district of Michigan to be imprisoned in the Detroit House of Correction for two years, and that in pursuance of said sentence he has been arrested and imprisoned and is now imprisoned and restrained from his liberty by the marshal of the United States for said district and one Joseph Nicholson, superintendent of the Detroit House of Correction.

Your petitioner further asserts that the said district court of the United States for the eastern district of Michigan had no jurisdiction in the premises, and that its acts were wholly void, and that your petitioner's imprisonment is unlawful; and your petitioner avers as one of the grounds of the lack of jurisdiction of said district court that it clearly appeared from the record of said court that the said letters which it was alleged in the indictment and found by the verdict of the jury your petitioner had unlawfully and wrongfully embezzled and secreted were not intended to be carried by a letter-carrier or intended to be conveyed by mail, and therefore the said district court of the United States had no lawful jurisdiction or cognizance of the offence alleged against your petitioner; and he attaches to this his petition, marked Exhibit "H," a true copy of all the testimony introduced on said trial describing your petitioner's alleged offence, authenticated by the affidavit of the official stenographer of the court; and he further avers that

there was no other testimony contradicting or affecting, explaining or modifying, this testimony introduced on said trial mate-
5 rial to this question. Wherefore he humbly prays that an order may be made forthwith directing a writ of *habeas corpus* to issue to Galusha Pennell, marshal, and Joseph Nicholson, superintendent and warden, as aforesaid, requiring them to produce the body of your petitioner before this court at some time to be designated in said writ, there to abide what shall be awarded by this court in the premises; and at the same time he prays that this court will direct a writ of certiorari to issue from this court to the said district court of the United States for the eastern district of Michigan, ordering and requiring said district court forthwith to certify to this court true copies of the proceedings, indictments, trials, judgments, and sentences which have been had, found, tried, and passed by the said district court in the premises against your petitioner, and under which he is now deprived of his liberty by the judgment of said district court, and also the testimony given on said trial as taken and transcribed by the official stenographer of the court, and also a writ of certiorari to the said circuit court of the United States for the eastern district of Michigan, ordering and requiring said circuit court to certify to this court true copies of the proceedings had therein in the said prosecution against your petitioner.

And, as in duty bound, your petitioner will ever pray, etc.

CHARLES H. WIGHT.

HENRY M. DUFFIELD,
Attorney for Petitioner.

6 UNITED STATES OF AMERICA, }
Eastern District of Michigan, } *ss:*

Charles H. Wight, being duly sworn, deposes and says that he has heard read the foregoing petition, and that the matters and facts therein stated are true of his own knowledge except as to such matters as are therein stated to be on information and belief, and that as to those matters he believes it to be true.

CHARLES H. WIGHT.

Subscribed and sworn to before me this 20th day of July, 1889.

CHARLES FLOWERS,
United States Commissioner, Eastern District of Michigan.

7 (EXHIBIT "A.")

UNITED STATES OF AMERICA:

The District Court of the United States for the Eastern District of Michigan, of the June Term, in the year of our Lord one thousand eight hundred and eighty-eight.

EASTERN DISTRICT OF MICHIGAN, *ss:*

The grand jurors of the United States empanelled and sworn to

enquire in and for the body of the eastern district of Michigan upon their oaths present that heretofore, to wit, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and eighty-eight, at the city of Detroit, in the eastern district of Michigan and within the jurisdiction of this honorable court, one Charles Wight, late of Detroit aforesaid, who was then and there a person employed in one of the departments of the postal service of the United States, to wit, employed as an assistant to the superintendent of letter-carriers in the post office at Detroit aforesaid, unlawfully and wrongfully did secrete and embezzle a certain letter which came into his possession in the regular course of his official duties and which was intended to be carried by a letter-carrier, which letter then and there contained five pecuniary obligations and securities of the Government of the United States, to wit, one note, commonly called a Treasury note, of the denomination and value of two dollars and four certificates of deposit of
8 the United States, commonly called silver certificates, each of the denomination and value of one dollar, which said pecuniary obligations and securities of the Government of the United States had been issued under certain acts of Congress, which said pecuniary obligations and securities of the Government of the United States then and there were the property of one Angus M. Smith, which said letter and said pecuniary obligations and securities of the Government of the United States were then and there enclosed in an envelope and addressed in the words and figures following, to wit:

OSCAR SINGLETON,
Montevideo,
Cook Co., Mich.

contrary to the form, force, and effect of the act of Congress in such case made and provided and against the peace and dignity of the United States.

Second. And the grand jurors aforesaid, upon their like oaths, do further present that heretofore, to wit, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and eighty-eight, at the city of Detroit, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Charles Wight, late of Detroit aforesaid, who was then and there a person employed in one of the departments of the postal service of the United States, to wit, employed as an assistant to the superintendent
9 of letter-carriers in the post office at Detroit, unlawfully and wrongfully did steal and take out of a certain letter which had come into the possession of him, the said Charles Wight, in the regular course of his official duties, certain pecuniary obligations and securities of the Government of the United States, to wit, one note, commonly called a Treasury note, of the denomination and value of two dollars, and four certificates of deposit of the United States, commonly called silver certificates, each of the denomination and value of one dollar, which said pecuniary obligations and se-

curities of the Government of the United States had been issued under certain acts of Congress, which said pecuniary obligations and securities of the United States then and there were the property of one Angus M. Smith, and were enclosed with said letter in an envelope and addressed and directed in the words and figures following, to wit:

OSCAR SINGLETON,
Montevideo,
Cook Co., Mich.

And the said grand jurors do present as aforesaid that neither the said letter nor the said pecuniary obligations or securities of the Government of the United States nor any one of said pecuniary obligations and securities had been delivered to the party to whom it was directed, and that the said Charles Wight did wrongfully and unlawfully steal and take the said pecuniary obligations and securities of the Government of the United States as aforesaid with intent then and there to appropriate the same to his own use, con-
10 trary to the form, force, and effect of the act of Congress in such case provided and against the peace and dignity of the United States.

Third. And the grand jurors aforesaid, upon their like oaths, do further present that heretofore, to wit, on the seventh day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the city of Detroit, in the eastern district of Michigan, within the jurisdiction of this honorable court, one Charles Wight, late of Detroit aforesaid, who was then and there a person employed in one of the departments of the postal service of the United States, to wit, employed as an assistant to the superintendent of letter-carriers in the post office at Detroit aforesaid, unlawfully, wrongfully did secrete and embezzle a certain letter which came into his possession and which was intended to be carried by a letter-carrier, which letter then and there contained five pecuniary obligations and securities of the Government of the United States, to wit, one note, commonly called a Treasury note, of the denomination and value of one dollar; one certificate of deposit of the United States, commonly called a silver certificate, of the denomination and value of two dollars; three certificates of deposit of the United States, commonly called silver certificates, each of the denomination and value of one dollar; which said pecuniary obligations and securities of the Government of the United States had been issued
11 under certain acts of Congress, which said pecuniary obligations and securities of the Government of the United States then and there were the property of one Angus M. Smith, which said letter and said pecuniary obligations and securities of the Government of the United States were then and there enclosed in an envelope and addressed in the words and figures following, to wit:

MISS PHŒBE HAVENS,
306 *South Moulton St.,*
Detroit, Mich.

contrary to the form, force, and effect of the act of Congress in such case made and provided and against the peace and dignity of the United States.

Fourth. And the grand jurors aforesaid, upon their like oaths, do further present that heretofore, to wit, on the seventh day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the city of Detroit, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Charles Wight, late of Detroit aforesaid, who was then and there a person employed in one of the departments of the postal service of the United States, to wit, employed as an assistant to the superintendent of letter-carriers in the post office at Detroit, unlawfully and wrongfully did steal and take out of a certain letter which had come into the possession of him, the said Charles Wight, certain pecuniary obligations and securities of the Government of the United States,
12 to wit, one note, commonly called a Treasury note, of the denomination and value of one dollar; one certificate of deposit of the United States, commonly called a silver certificate, of the denomination and value of two dollars; three certificates of deposit of the United States, commonly called silver certificates, each of the denomination and value of one dollar; which said pecuniary obligations and securities of the Government of the United States had been issued under certain acts of Congress, which said pecuniary obligations and securities of the United States then and there were the property of one Angus M. Smith and were enclosed with said letter in an envelope and addressed and directed in the words and figures following, to wit:

MISS PHŒBE HAVENS,
306 *South Moulton St.*,
Detroit.

And the said grand jurors do present as aforesaid that neither of the said letters nor the said pecuniary obligations or securities of the Government of the United States nor any one of said pecuniary obligations and securities had been delivered to the party to whom it was directed, and that the said Charles Wight did wrongfully and unlawfully steal and take the said pecuniary obligations and securities of the Government of the United States as aforesaid, with intent then and there to appropriate the same to his own use, contrary to the form, force, and effect of the act of Congress in such case made and provided and against the peace and dignity of the United States.

13 Fifth. And the grand jurors aforesaid, upon their like oaths, do further present that heretofore, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the city of Detroit, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Charles Wight, late of Detroit aforesaid, who was then and there a person employed in one of the departments of the postal service of the United States, to wit, employed as an assistant to the superin-

tendent of letter-carriers in the post office at Detroit aforesaid, unlawfully and wrongfully did secrete and embezzle a certain letter which came into his possession in the regular course of his official duties and which was intended to be carried by a letter-carrier, which letter then and there contained five pecuniary obligations and securities of the Government of the United States, to wit, one note, commonly called a Treasury note, of the denomination and value of one dollar; one certificate of deposit of the United States, commonly called a silver certificate, of the value and denomination of two dollars, and three certificates of deposit of the United States, commonly called silver certificates, each of the value and denomination of one dollar; which said pecuniary obligations and securities of the Government of the United States had been issued under certain acts of Congress, which said pecuniary obligations and securities of the Government of the United States then and there were the property of one Angus M. Smith, which said letter
14 and said pecuniary obligations and securities of the Government of the United States were then and there enclosed in an envelope and addressed in the words and figures following, to wit:

ASA P. JONES,
Crescent, York County,
Maple Leaf township. *Mich.*

contrary to the form, force, and effect of the act of Congress in such case made and provided and against the peace and dignity of the United States.

Sixth. And the grand jurors aforesaid, upon their like oaths, do further present that heretofore, to wit, on the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the city of Detroit, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Charles Wight, late of Detroit aforesaid, who was then and there a person employed as an assistant to the superintendent of letter-carriers in the post office at Detroit aforesaid, unlawfully and wrongfully did secrete and embezzle a certain letter which came into his possession in the regular course of his official duties and which was intended to be delivered by him, the said Charles Wight, to Charles Swan, the superintendent of carriers in said post office, at Detroit aforesaid, which letter then and there contained four pecuniary obligations and securities of
15 the Government — United States, to wit, one note, commonly called a Treasury note, of the denomination and value of one dollar, and three certificates of deposit of the United States, commonly called silver certificates, each of the denomination and value of one dollar, which said silver certificates had been issued under and by virtue of an act of Congress; which said pecuniary obligations and securities of the Government of the United States then and there were the property of one Angus M. Smith, which said letter and said pecuniary obligations and securities of the Gov-

ernment of the United States were then and there enclosed in an envelope and addressed in the words and figures following, to wit:

HASTINGS, FARWELL & CO.,
Lake View Building, Room 10,
Detroit.

contrary to the form, force, and effect of the act of Congress in such case made and provided and against the peace and dignity of the United States.

Seventh. And the grand jurors aforesaid, upon their like oaths, do further present that heretofore, to wit, on the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the city of Detroit, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Charles Wight, late of Detroit aforesaid, who was then and there a person employed in one of the departments of the postal service of the United States, to wit, employed as an assistant to the superintendent of let-
16 ter-carriers in the post office at Detroit, unlawfully and wrongfully did steal and take out of a certain letter which had come into the possession of him, the said Charles Wight, in the regular course of his official duties, certain pecuniary obligations and securities of the Government of the United States, to wit, four pecuniary obligations and securities of the Government of the United States, to wit, one note, commonly called a Treasury note, of the denomination and value of one dollar, and three certificates of deposit of the United States, commonly called silver certificates, each of the denomination and value of one dollar, which said silver certificates had been issued under and by virtue of an act of Congress; which said pecuniary obligations and securities of the Government of the United States then and there were the property of one Angus M. Smith and were enclosed with said letter in an envelope and addressed and directed in the words and figures following, to wit:

HASTINGS, FARWELL & CO.,
Lake View Building, Room 10,
Detroit.

And the said grand jurors do present as aforesaid that neither the said letter nor the said pecuniary obligations or securities of the Government the United States nor any one of said pecuniary obligations and securities had been delivered to the party to whom it was directed, and that the said Charles Wight did wrongfully and unlawfully steal and take the said pecuniary obligations and
17 securities of the Government of the United States as aforesaid, with intent then and there to appropriate the same to his own use, contrary to the form, force, and effect of the act of Congress in such case made and provided and against the peace and dignity of the United States.

C. P. BLACK,
United States Attorney for the Eastern District of Michigan.

(Printing of certificate of clerk district court omitted by stipulation.)

18 (EXHIBIT "B.")

In the District Court of the United States for the Eastern District of Michigan.

UNITED STATES
vs.
CHARLES WIGHT.

Motion to Quash Indictment.

The respondent moves to quash the indictment and each count thereof as follows:

1st count. Because it does not allege that the letter therein mentioned had not been delivered to the person to whom it was addressed.

2nd count. Does not allege that the letter therein mentioned was intended to be conveyed by mail or carried, &c.

3d count. Does not allege that the letter therein mentioned came into respondent's possession in the regular course of his duties, and that it had not been delivered to the person to whom it was addressed.

4th count. Does not allege that the letter therein mentioned was intended to be conveyed by mail nor that it came into respondent's possession in the regular course of his official duties.

19 5th count. Does not allege that the letter therein mentioned had not been delivered to the person to whom it was addressed.

6th count. Does not allege that the letter therein mentioned was intended to be conveyed by mail, and—

Does allege that it was intended to be delivered by respondent to Charles Swan, sup't of carriers, and does not allege that the letter therein mentioned had not been delivered to the party to whom it was addressed.

7th count. Does not allege that the letter was to be conveyed by mail.

HENRY M. DUFFIELD,
Attorney for Def't.

20 (EXHIBIT "C.")

District Court of the United States for the Eastern District of Michigan.

UNITED STATES
vs.
CHARLES WIGHT.

And now comes the said defendant, by Henry M. Duffield, his attorney, and moves the court to set aside the verdict heretofore

rendered in the said cause and grant a new trial for the following reasons:

First. Because the court refused to direct a verdict for the defendant.

Second. Because the court refused to charge the jury that under the previous arrangement between the inspector, Smith, and the Detroit post-office employés, that the letters charged in the indictment should be intercepted and returned to the inspector, said letters were not intended to be conveyed by mail or carried, etc., within the meaning of the statute.

Third. Because the court charged the jury that the arrangement testified to by the inspector, Smith, and the superintendent of carriers, Swan, did not affect the character of the letters or take them out from the meaning of the statute.

Fourth. Because the court refused to charge the jury as requested in the defendant's first request.

21 Fifth. Because the court refused to charge the jury as requested in the defendant's second request.

Sixth. Because the court refused to charge the jury as requested in the defendant's third request.

Seventh. Because the court refused to charge the jury as requested in the defendant's fourth request.

This motion is based upon the files, records, and proceedings in said cause.

HENRY M. DUFFIELD,
Attorney for Defendant.

22 District Court of the United States for the Eastern District of Michigan.

UNITED STATES
vs.
CHARLES WIGHT.

The defendant requests the court to charge the jury as follows:

1st. That if the jury find that the letters were spurious and were written by the United States inspector under a fictitious name and addressed to a fictitious person, at a place of address which did not exist, and the intention was that they should not be delivered but should come back to the possession of the United States inspector, then their verdict must be for the defendant.

2nd. That if the jury find that the letters were not mailed in the usual and ordinary way and were written by the United States inspector under a fictitious name and addressed to a fictitious person, at a place of address which did not exist, then their verdict must be for the defendant.

3d. That if the jury find that the letters were spurious and were written by the United States inspector under a fictitious name and addressed to a fictitious person, at a place of address which did not exist, then their verdict must be for the defendant.

4th. That under the testimony and indictment in this case the jury must find a verdict of acquittal.

23 EXHIBIT "D."

District Court of the United States for the Eastern District of Michigan.

UNITED STATES
vs.
CHARLES WIGHT.

And now comes the said defendant, by Henry M. Duffield, his attorney, being the term at which conviction was had, and moves the court to arrest the judgment upon the verdict heretofore rendered in this cause and to enter an order discharging the prisoner for the following reasons appearing on the record:

1st. Because the indictment filed in this cause and each and every count thereof is fatally defective and does not in any count thereof charge or set forth any offence against the laws of the United States.

2nd. Because the first count in said indictment does not allege that the letter therein mentioned had not been delivered to the person to whom it was addressed.

3d. Because the second count in said indictment does not allege that the letter therein mentioned was intended to be conveyed by mail or carried, &c.

4th. Because the third count in said indictment does not allege that the letter therein mentioned came into respondent's possession in the regular course of his duties, and that it had not been delivered to the person to whom it was addressed.

24 5th. Because the fourth count in said indictment does not allege that the letter therein mentioned was intended to be conveyed by mail, nor that it came into respondent's possession in the regular course of his official duties.

6th. Because the fifth count in said indictment does not allege that the letter therein mentioned had not been delivered to the person to whom it was addressed.

7th. Because the sixth count in said indictment does not allege that the letter therein mentioned was intended to be conveyed by mail, and does not allege that it was intended to be delivered by respondent to Charles Swan, superintendent of carriers, and does not allege that the letter therein mentioned had not been delivered to the party to whom it was addressed.

8th. Because the seventh count in said indictment does not allege that the letter was to be conveyed by mail.

HENRY M. DUFFIELD,
Attorney for Defendant.

25 At a session of the district court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, in said

district, on Tuesday, the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Hon. Henry B. Brown, district judge.

(EXHIBIT "E.")

THE UNITED STATES
vs.
CHARLES WIGHT. } On Indictment for Embezzling Letter, &c.

It is now by the court ordered that this cause be certified and remitted to the next circuit court of the United States for this district.

(Printing of certificate clerk of district court omitted by stipulation.)

26 (Printing of calendar entries omitted by stipulation.)

27 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the eleventh day of March, in the year one thousand eight hundred and eighty-nine.

Present: The Hon. Howell E. Jackson, circuit judge; the Hon. Henry B. Brown, district judge.

THE UNITED STATES
vs.
CHARLES WIGHT. } 226. Before Full Bench.

This cause having been certified from the district court and the defendant's motions for a new trial and in arrest of judgment coming on for argument, the court hears Mr. H. M. Duffield, for the defendant, in favor of said motions, and Mr. C. P. Black and Mr. C. T. Wilkins in opposition thereto, and thereupon said motions are submitted.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Tuesday, the twelfth day of March, in the year one thousand eight hundred and eighty-nine.

Present: The Hon. Howell E. Jackson, circuit judge, and the Hon. Henry B. Brown, district judge.

28 THE UNITED STATES OF AMERICA
vs.
CHARLES WIGHT. } 226. Before Full Bench.

In this cause the defendant's motions to set aside verdict and in arrest of judgment, after mature deliberation thereon, are by the court now here denied.

(Printing of certificate of clerk of circuit court omitted by stipulation.)

29 At a session of the district court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, in said district, on Tuesday, the twelfth day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Hon. Henry B. Brown, district judge.

(EXHIBIT "G.")

THE UNITED STATES *vs.* CHARLES WIGHT. } Convicted on Indictment for Embezzling Leters, &c.

The court now deliver judgment on the motions to set aside the verdict rendered by the jury herein and for a new trial, heretofore argued and submitted; and thereupon it is ordered that said motions be, and the same are hereby, denied, and that the order heretofore made herein certifying this cause to the circuit court of the United States for this district be, and the same is hereby, vacated as having been improvidently made.

And, the said defendant being now placed at the bar of the court for sentence, thereupon the court do now sentence him, the said Charles Wight, to be imprisoned and kept at hard labor, at and in the Detroit House of Correction, in the city of Detroit, Wayne county, Michigan, for the term of two years from and including this day, and to stand committed until the terms of this sentence are complied with.

30 (Printing of certificate of clerk of district court omitted by stipulation.)

31 Printing of the testimony for the Government on trial omitted at this place by stipulation, but to be printed hereafter in the certificate of the court. (See side page 133.)

76 (Printing of affidavit of stenographer omitted by stipulation.)

77 *Order to Show Cause.*

In the Matter of CHARLES H. WIGHT on Petition for a Writ of *Habeas Corpus.*

Charles H. Wight, a resident of the eastern district of Michigan, having presented to me, as associate justice of the Supreme Court of the United States, assigned to the sixth circuit, a petition for a writ of *habeas corpus*, in which it is alleged that he is restrained of his liberty by the marshal of the United States for said district and by one Joseph Nicholson, superintendent of the Detroit House of Correction, in the city of Detroit, Wayne county, Michigan, under an order or judgment of the district court of the United States for said district, passed March 12, 1889, in the case of the United States of America against said Charles H. Wight, and in which petition it is

also alleged that the said district court was wholly without jurisdiction to pass said order and judgment, and consequently that the petitioner is restrained of his liberty in violation of the Constitution and laws of the United States, it is now ordered that said petition be remitted to and filed in the circuit court of the United States for the eastern district of Michigan, and that all further proceedings thereon be had in said circuit court. It is further ordered that a rule forthwith issue from said circuit court against the said marshal of the United States for the eastern district of Michigan and said superintendent of the Detroit House of Correction, returnable before said circuit court within three days after the service thereof, or, if said court shall not then be in session, on the first day after it shall be in session, to show cause why a writ of *habeas corpus* shall not issue as prayed for in said petition.

Let a copy of this order be delivered to the attorney of the United States for the eastern district of Michigan.

August 25th, 1889.

JOHN M. HARLAN,
Asso. Justice of the Supreme — of the United States,
Assigned to the Sixth Circuit.

78 *Citation and Proof of Service.*

In the Circuit Court of the United States for the Eastern District of Michigan.

In the Matter of CHARLES H. WIGHT on Petition for a Writ of *Habeas Corpus.*

To Galusha Pennell, marshal of the United States for the eastern district of Michigan, and Joseph Nicholson, superintendent of the Detroit House of Correction:

You are hereby cited to be and appear before the circuit court of the United States for the eastern district of Michigan, at the court-room of said court, in the city of Detroit, on the third day after service hereof, at ten o'clock in the forenoon, then and there to show cause why a writ of *habeas corpus* shall not issue as prayed for in the said petition of Charles H. Wight, filed in said court on the 23d of August, 1889.

By order of court.

Witness my hand and the seal of said court this 11th
[SEAL.] day of September, 1889.

WALTER S. HARSHA, *Clerk,*
By D. J. DAVISON, *Dep. Clerk.*

79 (Printing of copy of rule, clerk's certificate, and proof of service of same on Joseph Nicholson, return of marshal thereto, and exhibits omitted by stipulation.)

87 *Return of Joseph Nicholson to Rule Requiring Him to Show Cause.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

In the Matter of CHARLES H. WIGHT on Petition for Writ of *Habeas Corpus.*

The undersigned, Joseph Nicholson, superintendent of the Detroit House of Correction, in return to the rule issued out of this court on the eleventh day of September, A. D. 1889, in the matter of said petition, a copy of which is hereto attached, would most respectfully say that he now restrains the said Charles H. Wight of his liberty and holds him as a prisoner in the Detroit House of Correction by virtue of a judgment and sentence duly made and entered by the district court of the United States for the eastern district of Michigan on the twelfth day of March, A. D. 1889, a certified copy of said judgment and sentence being hereto attached.

Dated Detroit, 16th September, A. D. 1889.

JOSEPH NICHOLSON,
Sup't of Detroit House of Correction.

88 (Printing of sentence omitted by stipulation. See side page 29, *ante.*)

(Printing of certificate of clerk of district court omitted by stipulation.)

89 (Printing of citation on U. S. marshal, copy of rule issued by Mr. Justice Harlan, and clerk's certificate omitted by stipulation of counsel. See side page- 77 & 78, *ante.*)

92 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Tuesday, the seventeenth day of September, in the year one thousand eight hundred and eighty-nine.

Present: The Honorable Henry B. Brown, district judge.

In the Matter of CHARLES H. WIGHT, Petitioner.

On reading and filing due proof of service on the marshal of this district and on Joseph Nicholson, sup't of the Detroit House of Correction, of the rule heretofore issued on the 11th day of September instant, and on filing the return of Joseph Nicholson, sup't of the Detroit House of Correction, the attorney for the petitioner moves for an order for a writ of *habeas corpus*, in accordance with the order of his honor Associate Justice Harlan, on the ground that said return does not purport to answer the petition and does not show any cause

why said writ of *habeas corpus* should not issue, and that no cause is shown why said writ should not issue; and thereupon the court, against the objection of the petitioner's attorney, continues the hearing of the cause until the 26th instant; to which ruling and decision the petitioner, by his attorney, then and there excepts in open court; and thereupon the said petitioner, by his attorney, makes application for bail in such reasonable sum as to the court shall seem fit, which application is denied by the court; to which decision the attorney for petitioner then and there in open court duly excepts.

93 *Proof of Service of Answer to Return of Joseph Nicholson.*

In the Circuit Court of the United States for the Eastern District of Michigan.

In the Matter of the Petition of CHARLES H. WIGHT for a Writ of *Habeas Corpus.*

The said Charles H. Wight, by Henry M. Duffield, his attorney, protesting that the pretended return of the said Joseph Nicholson, superintendent of the Detroit House of Correction, is not any answer to the petiton of this petitioner and is not a showing of cause why said writ should not issue as it has been commanded to be issued, unless cause to the contrary thereof is shown, and not waiving any right of objection to said return or any right to the writ of *habeas corpus* and a discharge thereunder upon said return, as heretofore prayed by him and denied by said court, but, insisting upon said right, in answer to said pretended return, says that the district court of the United States for the eastern district of Michigan had not, at the time of the said sentence referred to in said pretended return, any jurisdiction over him, the said Charles H. Wight, or any right or authority to pass such sentence against him, the said Charles H. Wight, because before the date of said sentence, to wit, on the 29th day of January, 1889, the said cause in which said district court assumed and pretended to pass upon him on the 12th day of March, A. D. 1889, had been
94 duly certified and remitted from said district court into the circuit court of the United States for the eastern district of Michigan, and the transcript thereof duly filed therein, and that up to the date of said alleged sentence, to wit, the 12th day of March, 1889, was and at the date hereof is still pending in said circuit court of the United States for the eastern district of Michigan, as is more fully and at length alleged and shown by the certified copies of the proceedings in said cause in the petition filed in this matter; and said petitioner prays leave to refer to the record of this honorable court in proof hereof and prays, as he has already prayed, for a writ of certiorari to bring up the record of the cause in said district court of the United States for the eastern district of Michigan, and for leave to refer to the same upon hearing of this matter.

And the said petitioner, Charles H. Wight, with like protest and saving like exceptions as hereinbefore made and saved, in further

answer to the said alleged and pretended return of said Joseph Nicholson, superintendent as aforesaid, but not waiving the said matters herein last above set out, but insisting upon them in his behalf, — that the said district court of the United States for the eastern district of Michigan never had or obtained jurisdiction over him, the said Wight, or over his said cause, as pretended and claimed in said court, for the following, among other, reasons, namely:

Because the indictment upon which your petitioner was arraigned and tried in said district court did not charge the commission of any offence over which the said district court had jurisdiction, or any offence against the laws of the United States, and also because the proof and evidence did not establish any offence against the laws of the United States or any offence of which said district court had jurisdiction; and he prays leave to refer to the certified copies of the indictment upon which he was arraigned and tried in
95 said district court and the stenographic minutes of the testimony given on his trial, sworn to by the official court reporter who took down said testimony, which are attached to his said petition filed in this matter, and he prays, as he had already in his petition in this matter prayed, that a writ of certiorari may issue to the district court of the United States to bring up the record thereof, and that the district judge who tried the cause in said district court be directed to certify whether the said testimony is correctly written out, and, if not, to correct the same and certify the same as thus corrected.

CHARLES H. WIGHT, *Petitioner.*

HENRY M. DUFFIELD,
Att'y for Petitioner.

STATE OF MICHIGAN,
Eastern District of Michigan, County of Wayne, } ss:

Charles H. Wight, being duly sworn, deposes and says that he has read the foregoing traverse to the return in this matter subscribed by him, and that the same is true in substance and in fact.

Sworn to and subscribed before me this 19th day of September, A. D. 1889.

JNO. F. McKINLEY,
Notary Public, Wayne County, Mich.

Circuit Court of the United States. Eastern District of Michigan.

STATE OF MICHIGAN,
Wayne County, } ss:

John F. McKinley, being duly sworn, says as follows: He resides in said county, and did, on Friday, of September, 1889, serve the within and foregoing petition upon Cyrenius P. Black, Esq., attorney of the United States for said district, by delivering to him personally a true thereof.

JNO. F. McKINLEY.

Subscribed and sworn to before me this 20th day of September, A. D. 1889.

BETHUNE DUFFIELD,
Notary Public, Wayne County, Mich.

96 *Order for Writ of Habeas Corpus.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Thursday, the twenty-sixth day of September, in the year one thousand eight hundred and eighty-nine.

Present: The Hon. Howell E. Jackson, circuit judge; the Hon. H. F. Severens, dis. judge, western dis.; the Hon. Henry B. Brown, district judge.

In the Matter of the Petition of CHARLES H. WIGHT for a Writ of *Habeas Corpus.*

In this matter it is now by the court ordered that a writ of *habeas corpus* issue herein, to be directed to Joseph Nicholson, superintendent of the Detroit House of Correction, in the city of Detroit, and to Galusha Pennell, marshal of the eastern district of Michigan, to be made returnable on Monday, the thirtieth day of September instant, at 10 o'clock a. m.

97 *Writ of Habeas Corpus.*

The President of the United States of America to the marshal of the eastern district of Michigan, and to Joseph Nicholson, superintendent of the Detroit House of Correction, Greeting:

You and each of you are hereby commanded that you have the body of Charles Wight, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Charles Wight shall be called or charged, before our circuit court for the eastern district of Michigan, at the court-house, in the city of Detroit, in said district, on Monday, the thirtieth day of September instant, at the opening of court on said day, to do and receive what shall then and there be considered concerning the said Charles Wight; and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth.

[SEAL.] WALTER S. HARSHA, *Clerk*,
By D. J. DAVISON, *Dep. Clerk.*

98 (Printing of proof of service of writ and return of marshal, copy of writ attached, and copy of sentence attached omitted in stipulation of counsel.)

103 *Return of Joseph Nicholson to Writ of Habeas Corpus.*

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

In the Matter of *Habeas Corpus* on Petition of CHARLES H. WIGHT.

To the said circuit court:

The undersigned, Joseph Nicholson, in return to the said writ of *habeas corpus*, duly allowed by said court on the twenty-sixth day of September, A. D. 1889, commanding him to have the body of the said Charles Wight, by him imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Charles Wight shall be called or charged, before our circuit court for the eastern district of Michigan, at the court-house, in the city of Detroit, in said district, on Monday, the thirtieth day of September, at the opening of court on said day, to do and receive what shall then and there be considered concerning the said Charles Wight, does hereby certify to said court that he is superintendent of the Detroit House of Correction, a prison designated for the reception and custody of persons committed to prison for violating the statutes of the United States within the eastern district of Michigan, and that he now restrains the said Charles Wight and holds him as a prisoner lawfully committed to the said Detroit House of Correction by virtue and authority of a judgment and sentence made and entered by the district court of the United States for the eastern district of Michigan on the twelfth day of March, A. D. 1889, a copy of said judgment and sentence being hereto attached and made part of this return, the original of which is now produced and shown to the court. The undersigned therefore most respectfully submits that such judgment and sentence so shown is a full and complete return to said writ.

104 But in reply to the allegation contained in the petition upon which said writ was allowed, viz., that the said district court had not at the time of said sentence any jurisdiction over him, the said Charles Wight, or any right or authority to pass such sentence against him, the said Charles Wight, because before the date of said sentence, to wit, on the twelfth day of January, A. D. 1889, the said cause had been duly certified and remitted from said district court into the circuit court of the United States for the eastern district of Michigan, and at the date of said petition was still pending in said circuit court, the undersigned, upon information and belief, alleges and returns that said cause was not at the time of said sentence pending in said circuit court, but had been before that time, to wit, on the said twelfth day of March, by a lawful order of said circuit court, remitted and remanded to the said district court for such further proceedings as said district court should see fit to take, and if such order, so made as aforesaid by said circuit court, does not appear upon the records of said court the omission

arose in consequence of the failure of the clerk to record said order, and the undersigned most respectfully submits to this honorable court that it should now cause said order to be duly entered *nunc pro tunc;* all of which is respectfully submitted, certified, and returned.

JOSEPH NICHOLSON,
Superintendent of the Detroit House of Correction.

105 (Printing of copy of writ and copy of sentence attached to return of Joseph Nicholson omitted by stipulation.)

(See side pp. 97 & 29, *ante.*)

107 *Answer to Return of Joseph Nicholson.*

In the Circuit Court of the United States for the Eastern District of Michigan.

In the Matter of the Petition of CHARLES H. WIGHT for a Writ of *Habeas Corpus.*

EASTERN DISTRICT OF MICHIGAN, } *ss:*
County of Wayne, }

The said Charles H. Wight, by Henry M. Duffield, his attorney, protesting that the pretended return of the said Joseph Nicholson, superintendent of the Detroit House of Correction, is not any answer to the petition of this petitioner, and not waiving any right to said return or any benefit or advantage or exception previously had or taken or any right under the previous proceedings hereinbefore had to a discharge from his imprisonment at any previous stage of said proceedings, but insisting upon said right, in answer to said return says that the district court of the United States for the eastern district of Michigan had not, at the time of said sentence referred to in said return, any jurisdiction over him, the said Charles H. Wight, or any authority to pass such sentence against him, the said Charles H. Wight, because before the date of said sentence, to wit, on the twenty-ninth day of January, 1889, the indictment pending in said cause, in which said district court assumed to pass sentence upon him,
108 on said 12th day of March, 1889, had been duly remitted from said district court into the circuit court of the United States for the eastern district of Michigan, and the transcript thereof duly filed therein, and that up to the date of said sentence, to wit, the 12th day of March, 1889, was and at the date hereof is still pending in said circuit court of the United States for the eastern district of Michigan, as is more fully and at length alleged in the petition in this matter and shown by the certified copy of the proceedings in said cause in said circuit and district courts, attached to the petition filed in this matter.

And your petitioner prays leave to refer to the record of this honorable court and to the record of said district court in proof hereof,

and prays, as he has already prayed, for a writ of certiorari to bring up the record of said cause in said district court of the United States for the eastern district of Michigan and for leave to refer to the same upon the hearing of this matter.

And the said petitioner, with like protest and saving like exceptions as hereinbefore made, and for a further answer to the said return of said Joseph Nicholson, superintendent as aforesaid, but not waiving any of the said matters herein last above set out, but insisting upon them in his behalf, says that the said district court of the United States for the eastern district of Michigan never had or obtained jurisdiction over him, the said Wight, or over his said cause, as pretended and claimed in said court, for the following, among other, reasons, namely, because the indictment upon which your petitioner was arranged and tried in said
109 district court, a true copy whereof is attached to his petition, did not charge the commission of any offence over which the said district court had jurisdiction or any offence against the laws of the United States, and also because the proof and evidence in said cause did not establish any offence against the laws of the United States or any offence of which said district court had jurisdiction; and he prays leave to refer to the certified copy of the indictment upon which he was arraigned and tried in said district court and the stenographic minutes of the testimony given on his trial, sworn to by the official court reporter who took down said testimony, which are attached to said petition filed in this matter; and he also prays, as he has already in his petition in this matter prayed, that a writ of certiorari may issue to the district court of the United States to bring up the records thereof, and that the district judge who tried the cause in said district court be directed to certify whether the said testimony is correctly written out, and, if not, to correct the same and certify the same as corrected.

CHARLES H. WIGHT, *Petitioner.*

HENRY M. DUFFIELD,
Attorney for Petitioner.

STATE OF MICHIGAN, }
Eastern District of Michigan, County of Wayne, } *ss:*

Charles H. Wight, being duly sworn, deposes and says that he has read the foregoing traverse to the return of Joseph Nicholson, superintendent of the Detroit House of Correction, to the writ of *habeas corpus* in this matter above subscribed by him, and that the same is true in substance and in fact.

CHARLES H. WIGHT.

Sworn to and subscribed before me this 28th day of September.

JOHN F. McKINLEY,
Notary Public, Wayne County, Mich.

110 *Order Discharging Writ.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the thirtieth day of September, in the year one thousand eight hundred and eighty-nine.

Present: The Hon. Howell E. Jackson, circuit judge, and the Hon. H. B. Brown, district judge.

In the Matter of the Writ of *Habeas Corpus* on the Petition of CHARLES H. WIGHT.

This matter coming on to be heard upon the return of Joseph H. Nicholson, superintendent of the Detroit House of Correction, and the return of Galusha Pennell, United States marshal for said district, to said writ of *habeas corpus*, which return had been duly filed in said court, and the said petition-, Charles H. Wight, being now in court, and it appearing to the court now here from the said return of the said Joseph Nicholson and from the files and records of this court and of the district court of the United States for said district that on the twelfth day of March, in the year of our Lord one thousand eight hundred and eighty-nine, when the said petitioner, Charles H. Wight, was sentenced by said district court to be imprisoned in said Detroit House of Correction, said district court had jurisdiction of the matter in which the petitioner was sentenced, and that such matter was properly before such court; and it further appearing, therefore, that the said petitioner is properly in the custody of the said Joseph H. Nicholson, it is now ordered that the said writ of *habeas corpus* be, and the same is hereby, discharged; and it is further ordered that the petitioner, Charles H. Wight, be, and he is hereby, remanded to the custody of the said Joseph H. Nicholson as sup't of the said Detroit House of Correction.

111 *Objections and Exceptions of the Petitioner.*

In the Circuit Court of the United States for the Eastern District of Michigan.

In the Matter of the Petition of CHARLES H. WIGHT for a Writ of *Habeas Corpus.*

And now comes the said petitioner, by Henry M. Duffield, his attorney, and in open court files his objections and exceptions to the order this day entered in this matter denying the petition in this matter and recommitting him to the custody of the Detroit House of Correction, as follows, to wit:

1. Because the same was made and entered contrary to and disregarding the record made upon the issue raised on his said petition and based solely upon an unauthorized and erroneous alteration of the same.

2. Because no such order as is by such order now entered *nunc pro tunc* on the record of the circuit court of the United States was ever in fact made or announced in open court by the judges thereof at any time when the petitioner or his said counsel was present or at any time when they or either of them had been previously notified to be present.

3. Because no entry or minute of any such order appears in either of the clerk's short books or in any memorandum or diary of either of the judges.

4. Because the entry of such an order *nunc pro tunc*, which contradicts the record upon which the petitioner was sentenced, cannot lawfully be made after the expiration of the term at which the proceedings immediately preceding and contemporaneous with his final sentence were entered.

5. Because the petitioner upon his petition was entitled to the benefit of the record as it remained in court at the time of his sentence and the filing of his petition in the matter and upon
112 the authority of which he was sentenced, and the same could not legally be changed in order to meet and answer the errors in such records which he alleged in his petition as grounds for his discharge.

HENRY M. DUFFIELD,
Att'y for Petitioner.

113 *Certificate of Court.*

In the Circuit Court of the United States for the Eastern District of Michigan.

In the Matter of the Petition of CHARLES H. WIGHT for a Writ of *Habeas Corpus.*

And afterwards, to wit, on the 30th day of September, A. D. 1889, the matters in issue, under a petition filed in this case, came on to be heard before their honors the Honorable Howell E. Jackson, circuit judge, and the Honorable Henry B. Brown, district judge; and thereupon the petitioner, to maintain the issue on his part, offered in evidence the record of the cause of the United States *vs.* Charles Wight (being the same person as the petitioner in this matter) in the district court of the United States for the eastern district of Michigan, and the whole of such record, which was as follows:

114 (Printing of indictment omitted by stipulation. See side page 7, *ante.*)

124 (Printing of motion to quash indictment omitted by stipulation. See side page 18, *ante.*)

125 (Printing of arraignment of prisoner and pleading not guilty, with leave to withdraw and change plea, omitted by stipulation.)

127 (Printing of motion for a new trial omitted by stipulation of counsel. See side page 20.)

129 (Printing of defendant's request to charge omitted by stipulation. See side page 22.)

130 (Printing of motion in arrest of judgment omitted by stipulation. See side page 23.)

131½ (Printing of the order certifying case to circuit court omitted by stipulation. See side page 25.)

132 (Printing of order of district court denying motion for a new trial and sentence omitted by stipulation. See side page 29.)

And petitioner's counsel, further to maintain the issue on his part, offered in evidence the copy of the testimony attached to the petition of the petitioner in this matter, and sworn to by the official stenographer of said court, which is hereby certified by the district judge to be a true, full, and correct copy of all the testimony describing petitioner's offence, introduced on the trial of the petitioner
133 in the district court, under the indictment upon which the sentence complained of in the petition in this matter was passed.

31 (EXHIBIT "H.")

The District Court of the United States for the Eastern District of Michigan.

THE UNITED STATES
vs.
CHARLES WIGHT

Tried Nov. 30, 1888.

A motion to quash was filed with the court and the motion was overruled.

Juror Harbeck was challenged for cause and the challenge was denied, and he was then challenged peremptorily.

Mr. Wilkins, in his opening to the jury, among other things, said: "In this office, as in others, there has been more or less stealing;" to which counsel for defendant objected. The objection was overruled and the defendant excepted.

ANGUS M. SMITH, sworn on behalf of the Government.

Examined by Mr. WILKINS:

Q. What is your business?
A. Post-office inspector.
Q. Were you such on the 1st of June last?

A. Yes, sir.

32 Q. Do you know Charles Wight?

A. Yes, sir.

Q. How long have you known him?

A. I should think about two years.

Q. What has been his position in the post office?

A. Assistant superintendent of carriers.

Q. In Detroit, in the post office?

A. Yes.

Q. Do you know what his duty was as assistant?

A. He used to act as superintendent in the absence of Mr. Swan.

Q. When was your attention called to the disappearance of any letters in this post office down-stairs—that is, I mean about the time?

Objected to as immaterial.

COURT: I think that is proper, as showing why these investigations were made.

Mr. DUFFIELD: I submit, it is of no consequence and is immaterial in this case to put in evidence something not shown in the indictment and something the defendant is not connected with.

COURT: I think the witness has the right to say that his attention was called to the disappearance of letters in the office without going into details. It shows his reason for investigation. Answer the question.

Exception for defendant.

A. My attention was called to it.

Q. I mean in connection with this particular investigation in this case?

33 A. It was called to it and I came here in May.

Q. In connection with this case?

A. Yes, sir.

Q. Did you make any investigation at that time in this office?

A. Yes, sir.

Q. What course did you pursue?

A. Used test letters. Tested almost every man in the office.

Q. When did you first, if at any time, test the defendant directly? I will change that question. When did you first notice the disappearance of any letters which you attributed to the defendant?

A. The 28th day of June, I think, was the first one.

Q. Do you remember or have you a memorandum with you made at the time, showing what that letter was, what it contained, and where it was mailed?

A. Yes, sir.

Q. What was in that letter?

A. There was six dollars in that letter.

Q. Do you remember in what shape the six dollars was?

A. Yes, sir.

Q. In what shape was it?

A. In one and two dollar bills.

Q. Who owned these?
A. I did.
Q. Where was the letter addressed?
A. To Oscar Singleton, Montevideo, Cook county, Michigan.
Q. Do you know whether there is any such place in Michigan?
A. No, sir.
34 Q. Where was that letter mailed?
A. That letter was mailed at the box at Hull's Bros.' store, at the corner.
Q. In this city?
A. Yes, sir.
Q. What was your intention in mailing that letter?

Objected to. Objection overruled; question withdrawn.

Q. Had you any arrangements made as to that?
A. Yes. I intended the letter should be carried by the regular carriers, go into the post office, and be returned subsequently to me.
Q. Should be returned in what case?
A. In case it went through all right it was to be returned by Superintendent Swan to me.
Q. What would have been the natural course of that letter if not interfered with?
A. It should go to the carrier who collected it where I mailed it. He would bring it into the office. It would then go into the hands of Mr. Fuller.
Q. That is, if it passed through safely?
A. Yes.
Q. Who was Mr. Fuller?
A. The superintendent of mails.
Q. And from Mr. Fuller's hands?
A. It would go to Mr. Swan's desk.
Q. Why?
35 A. Because there was no such place as Montevideo.
Q. What was your arrangements then?
A. If it got to Mr. Swan's desk he was to return it to me.
Q. Did he return it to you?
A. No, sir.
Q. You did not get the letter?
A. No, sir.
Q. Have you ever seen that letter since?
A. No, sir.
Q. What next did you do after mailing that letter of June 28th?
A. I mailed another one July 6th.
Q. What did that letter contain?
A. That letter contained four dollars, and I postmarked that Chicago.
Q. To what address?
A. Addressed to Hastings & Farwell, Lake View building, room No. 10, Detroit.
Q. Is there any such building?
A. No, sir.

Q. What did you do?
A. I gave that letter to Mr. Swan, to be thrown to the defendant.
Q. What do you mean?
A. I mean placed so he would handle it.
Q. Placed with other mail which he would handle?
A. Yes.
Q. You gave it to Mr. Swan?
A. Yes.
Q. After it was thrown to the defendant, what plan did you have as to its disposition?
36 A. It should be returned to Mr. Swan. He would get the letter again in order to ascertain whether there was any such building or firm.
Q. Who would give it to him?
A. The defendant.
Q. After finding there was no such building?
A. Yes, sir.
Q. And if it was returned to Mr. Swan in safety what plan did you have with reference to it?
A. He was to return it to me.
Q. You say you did give it to Mr. Swan?
A. Yes.
Q. What day was that?
A. I think it was the 6th day of July.
Q. What next did you do?
A. July 7th I mailed the letter to Phœbe Havens, 306 South Moulton St., Detroit.
Q. Containing what?
A. Six dollars.
Q. Who did that money belong to?
A. To me.
Q. The same as the contents of all the letters you have spoken of?
A. Yes.
Q. Where was it put?
A. In the letter box by the corner of the Griswold House.
Q. In the regular letter-box?
A. Yes, sir.
Q. Was there any such street in Detroit that you know of?
37 A. No, sir.
Q. What would have been the usual course for that letter?
A. It would have been collected by the carrier; have come into the post office; it would have gone into Mr. Fuller's hands, the superintendent of mails.
Q. Would it go into Mr. Fuller's hands?
A. No, sir; I am mistaken; it would not. It would go into the defendant's hands.
Q. What was the defendant's duty as to such letter?
A. He should give that letter to Mr. Swan.
Q. What was your arrangement concerning such letter?
A. In case Mr. Swan got the letter he was to return it to me.

Q. But it was first to be carried from the letter-box to the post office?

A. Yes, sir.

Q. And in due course you say it would arrive in the defendant's hands?

A. Yes, sir.

Q. And if it came out of the defendant's hands in safety you would get it?

A. Yes, sir.

Q. Did you ever get that letter?

A. No, sir.

Q. What next did you do?

A. On July 10th I mailed a letter to Asa P. Jones, Crescent, York county, Maple Leaf township, Michigan. That letter I gave to Mr. Swan, with another.

38 Q. Did you see them mailed?

A. Yes, sir; in the letter-box of the Buhl block.

Q. What arrangement did you have about this letter?

Mr. DUFFIELD: You say you saw this letter mailed?

A. Yes, sir; I handed it to Mr. Swan and went with him.

Mr. WILKINS: Go on.

A. That letter was to be collected by the carrier and brought into the office.

Q. You had no arrangements with any carriers, did you?

A. No, sir.

Q. What would the natural course of the letter be?

A. It should be collected by the regular carrier and bought into the post office. Mr. Swan was to see that the carrier brought it into the post office.

Q. Was he to see that he brought it in—speak to him about it?

A. No, sir.

Q. You mean to see that it did come in?

A. Yes, sir.

Q. Where would it go?

A. Into Mr. Fuller's hands.

Q. What would he do with it?

A. Put it on Mr. Swan's desk.

Q. Who would it be handled by then?

A. Handled by the defendant.

Q. And if it passed through the defendant's hands in safety what would become of it?

A. It was to be returned to me.

39 Q. Who would it come to from the defendant?

A. Mr. Swan.

Q. Was Mr. Swan to return it to you?

A. Yes, sir.

Q. What contents did that letter have?

A. Six dollars.

Q. To whom did the contents belong?

A. To myself.

Q. In what shape was that six dollars?

A. One and two dollar bills.
Q. You may look at that letter (showing a paper to witness).
A. Yes, sir; that is the letter.
Q. That is which letter?
A. That is the last letter mailed by me or given to Mr. Swan to mail by me on the 10th day of July.
Q. You say the contents of that was six dollars?
A. Yes.
Q. Has that letter been opened?
A. No, sir.
Q. What is stamped on it there?
A. "No such office in State named."
Q. By whom would that naturally be stamped?
A. By Mr. Fuller.
Q. What was the course with that letter? I mean what do you know concerning it? You say you mailed it in the Buhl block.
A. Yes.
Q. What next?
A. The next I saw of it the defendant threw it on the sidewalk.
Q. You say Mr. Swan, if he received it, was to return it to
40 you?
A. Yes.
Q. When did you first learn that Mr. Swan had not found it?
A. About half past seven in the evening.
Q. How long was that before the defendant left the post office?
A. About 30 minutes.
Q. Then he left the post office about eight o'clock, did he?
A. Yes, sir.
Q. What did you do when he left?
A. I met him outside of the post office, in the alley.
Q. Did you have any conversation?
A. Yes, sir; Mr. Burt was with him and I told him they were just the gentlemen I wanted to see. I wanted some information, and if they would step into the postmaster's room for a few minutes I would like to have them do so. Mr. Wight spoke up and said he had an engagement at eight o'clock—he was to meet some one over at some saloon, I think it was Winckler's or some such name, on Woodward Ave., and he couldn't go. I told him it wouldn't take us but a short time, and at last he told me he wouldn't go; it would only take him five minutes, and I told him if it wouldn't take more than five minutes I would go with him. I went with him to this saloon and stayed there three or four minutes, I should judge, and he pulled out his watch and showed it to some one who was there; I don't know who it was.
Q. What next?
41 A. He started to go back to the door—I supposed he was going to the post office—and Mr. Burt also went along.
Q. Who is he?
A. He is now assistant superintendent of carriers.
Q. Where did you go?
A. We walked towards the post office and got right here to the

corner, and there was—I don't know, some one had stolen some jewelry, I understood afterwards, and they caught the young fellow right out in front of the post office, and there was quite a crowd.

Q. In front of the post office?

A. Yes.

Q. On which side of the street—on the post-office side or the other side?

A. The other side.

Q. In front of the other building?

A. Yes.

Q. You say there was a crowd there?

A. Yes.

Q. What did the defendant do?

A. We stood on the corner watching the crowd, and all at once Wight started and ran, and as he started I started after him. Just as he got to the crowd he reached in his pocket and grabbed this letter, and as his hand came out of his pocket I grabbed his arm and told him it was a little bit too late, and as I did so he dropped the letter, and a young man standing there said, Mister, you dropped a letter, and he stooped down and picked it up and handed it to me.

42 Q. Was that the same letter you mailed?

A. Yes, sir—that is, he reached it out to Wight, and I took hold of the letter and told him it was a little bit too late for that. He says, "Well, there it is. I know what you are after. Come on."

Q. Where did you go?

A. To the postmaster's room.

Q. Did you have any talk with him there?

A. Yes.

Q. Did you make any promises to him to induce him to talk?

A. No, sir.

Q. What took place in the postmaster's room?

A. I believe the first remark Mr. Wight made——

Q. (Interrupting.) Was there anybody there besides you?

A. Yes.

Q. Who?

A. Mr. Swan and Mr. Burt.

Q. What took place?

A. The first remark that Mr. Wight made was that that was the only letter that he had ever taken.

Q. Was that in answer to a question or did he make that himself?

A. I don't know whether it was in answer to a question or not.

Q. He said it, anyway?

A. Yes.

Q. What took place next?

A. I told him I had lost three before that, and after awhile he owned to taking one other.

43 Q. Did you speak of the address of that one to him? Was anything said as to the address of that letter?

A. I think I did.

Q. Tell everything as far as it occurred.

A. After a short time I told him I had three others, and he finally said that he took one other besides the one I found on his person, and after awhile he said he had taken four altogether.

Q. Did you say anything to him or was there anything said to him at the time as to where the letters were to go?

A. Yes; but he said he didn't remember the addresses. He said he remembered taking one that contained six dollars.

Q. What next?

A. And he did not know exactly how much he got out of all of them.

Q. What took place next after you had this talk with him?

A. He said he would like to make a statement in regard to the matter.

Q. Well, go ahead.

A. And I believe in the meantime you had arrived there. I have forgotten who it was asked him or told him any statement he made would be used against him. He said that it didn't make any difference; that he would plead guilty; that he was guilty, and would so plead, and I think you asked him if he wanted to make any statement and he said yes.

Q. Do you remember whether it was taken down at his request or not?

44 A. Yes, sir.

Q. By whom?

A. By yourself, I think.

Q. Is that the paper (handing paper to witness)? Just look at the end of it. I suppose you can tell?

A. Yes, sir.

Q. After his statement was taken down, do you remember whether or not it was read to him?

A. Yes, sir; it was read to him.

Q. Just look at that statement and see whether it is signed or not?

A. Yes, sir.

Q. By whom?

A. Charles Wight, and witnessed by myself and Charles Swan, assistant superintendent of carriers.

Q. Did you see it signed?

A. Yes.

Q. Who signed it?

A. Mr. Wight.

Mr. WILKINS: I offer this statement in evidence, your honor.

Statement admitted.

Q. What else took place there after the making of the statement?

A. Mr. Wight gave me the $16 that were taken out of the other three letters.

Q. He paid that back at the time, did he?

A. Yes.

Q. Did he say why he paid it back?

45 A. He said he paid it back because he knew that he took the money, and it was money that didn't belong to him.

Mr. DUFFIELD: I would like to ask a question with regard to this paper.

COURT: Very well.

Q. Is this the statement that you say was written by Mr. Wilkins?
A. Yes.
Q. And there was no statement written out before Mr. Wilkins came?
A. No, sir.
Q. Was Mr. Wilkins there when the statement was signed?
A. Yes, sir.
Q. Do you know in whose handwriting the statement is?
A. Yes, sir.
Q. Whose?
A. Mr. Wilkins'.
Q. You saw him write it?
A. Yes, sir.

Mr. DUFFIELD: There is no objection.

The statement is admitted in evidence and marked Exhibit "A."

Mr. WILKINS: I also offer in evidence the letter found on defendant's person, which had not yet been opened.

Mr. DUFFIELD: There is no objection.

The letter is marked Exhibit "B" and admitted in evidence.

Mr. WILKINS:

46 Q. Then, as I understand, there were four letters in all mailed by you, the taking of which was admitted by the defendant?
A. Yes, sir.
Q. Putting aside the letter addressed to Hastings, Farwell & Co., were those mailed regularly the same as any other letter?
A. Yes, sir.
Q. What was your plan and intention as to all of them? For what purpose were they mailed?
A. They were mailed for the purpose of testing——

Mr. DUFFIELD: I object. He has stated all the facts.

Question withdrawn.

Q. The general plan was that if they passed through in safety, through everybody's hands, and if they passed through the defendant's hands in safety, they were to be delivered to you?
A. Yes, sir.
Q. The contents of all those letters, you say, belonged to you?
A. Yes.

Cross-examination by Mr. DUFFIELD:

Q. In the absence of any arrangement made between you and the post-office officials here in Detroit what would have been done

with the Oscar Singleton letter, according to the usual course of mailing? Suppose you had had no arrangement, what would have been done with that letter in case it had passed on Mr. Swan's desk?

A. It would not go any further than Mr. Swan's desk.

47 Q. What would he do with it?

A. It would be separated and put in a pigeon-hole there and, I think, advertised.

Q. Montevideo, Cook county, Michigan, was that?

A. Yes, sir.

Q. That would be advertised?

A. Yes, sir.

Q. After it was advertised what would be done with it?

A. If no one called for it, it would be sent to the dead-letter office.

Q. Do they in Detroit advertise letters addressed to places outside of Detroit?

A. I think they would advertise a letter of that kind. I am not positive about that.

Q. It would ultimately, however, go to the dead-letter office?

A. Yes, sir.

Q. And at the dead-letter office it would be returned to the writer?

A. Yes, sir.

Q. Did you sign your name to it?

A. No, sir.

Q. Did you write any letter at all?

A. Yes.

Q. What name did you sign?

A. I don't know; I have not got that down.

Q. Do you remember what was put into the letter?

A. Yes.

Q. State what you wrote.

48 A. I don't know what I wrote. I know what amount of money was in the letter.

Q. Did you write anything or put in a blank piece of paper?

A. No, sir; I wrote a letter.

Q. You don't know what name you did sign?

A. No, sir.

Q. Then, in case that letter went to the dead-letter office you could never have got it, except by virtue of being some post-office employé?

A. No, sir.

Q. At the dead-letter office it would be returned to the writer if possible?

A. I may have remembered at that time what I signed, but I didn't put it down, because it wouldn't be necessary in case the letter was found, for I had a description of the bills that were in there, and that was all that was necessary.

Q. You did not put down the name you signed because you knew the letter would be returned to you by Mr. Swan or by the post

office here and you would not have to send to the dead-letter office?

A. I knew it would be if it was not taken by some one.

Q. It would not go through the regular course?

A. Not if it went to Mr. Swan it wouldn't.

Q. The next letter is the Phœbe Haven letter, 306 South Moulton St.

A. Hastings, Farwell & Co. is the next letter.

49 Q. The next letter in the indictment is the Philip Haven letter. You had the same arrangement with reference to that?

A. Yes.

Q. How did you sign that letter?

A. I have not the signature down. I don't know what I signed.

Q. What did you say in it?

A. I don't remember.

Q. Was there any letter at all, other than a piece of paper?

A. Yes.

Q. You are unable to tell how you did sign it?

A. Yes.

Q. And so if that had gone through the regular course you never could have gotten it again?

A. I don't know. I may have remembered at the time what I signed, but I knew it would not get to the dead-letter office.

Q. Then, you knew by your previous arrangement that this letter would not be carried in the regular way through the mail?

A. It would be carried in the regular way until it reached Mr. Swan.

Q. And after that it would not?

A. No, sir.

Q. The next letter in the indictment is the Jones letter, and that we have here, as I understand you?

A. Yes.

Q. As to the Hastings, Farwell & Co. letter there was the same arrangement?

50 A. Yes.

Q. How did you sign that letter?

A. I have not the signature to it down. I have got the signature to just two letters.

Q. You have not the signature to this letter?

A. No, sir.

Q. Do you remember what you said in it?

A. No, sir.

Q. And I suppose the same arrangement was had with reference to that, and you relied on the same arrangement with reference to others?

A. Yes, sir; and that letter would be advertised.

Q. These letters addressed to Detroit would be advertised?

A. Would be advertised.

Q. And this, you think, might or might not?

A. I am not sure.

Q. And after they were advertised they would be returned to the dead-letter office?

A. Yes.

Q. And from there returned to the writer?

A. Yes.

Q. And afterwards the valuable things taken out and registered, to be claimed by the writer?

A. Yes.

Q. How long were you here on this business?

A. About two months.

51 Q. Did you immediately begin a system of decoy letters or test letters?

A. Yes.

Q. And do you remember when you sent your first one?

A. No, sir; I don't remember the date.

Q. About when?

A. I could not tell you just when I commenced working on the office.

Q. Well, if that is about the time, I suppose you very soon began by sending decoy letters?

Witness refers to memorandum.

A. I suppose about the 1st of May.

Q. Have you any idea how many of those letters you sent in all?

A. No, sir; I have not.

Q. About how many?

A. I suppose at least one a day.

Q. One a day from the 1st of May to the 10th of July?

A. Some days I would send three or four and other days not any.

Q. Would it average one a day?

A. Yes, sir.

Q. It would be about 70 letters in all?

A. Yes.

Q. Did they all have money in them?

A. Yes.

Q. And was this arrangement made with reference to the whole 70?

A. Yes.

Q. How did you put the money in the letters?

52 A. I used to roll it up and place it in the letters.

Q. Taking some pains, I suppose, that it should give notice to the employé that the money was in it?

A. Yes, sir.

Q. Not mailing it precisely as you would if you were *bona fide* sending some letters through the mails?

A. I think I should take more pains.

Q. The idea being to tempt the post office employé by the way the money was put in?

A. I wanted the people who handled it to know there was money in it.

Q. And all these 70 were so done?

A. Yes.

Q. Did you have just the same amount generally in each of the letters?

A. No, sir.

Q. Were all of these letters addressed to fictitious persons?

A. No, sir.

Q. Were the most of them?

A. I think not.

Q. Were they all addressed to incorrect addresses or impossible addresses?

A. No, sir.

Q. Were the most of them?

A. I don't know about that.

Q. I suppose these in the indictment were not the only fictitious letters?

A. No, sir.

53 Q. You had some arrangement you said with Mr. Swan concerning these test letters?

A. I had some arrangement, but with different persons, different employés.

Q. Then, if they were addressed to regular persons, did you have an arrangement that a letter addressed to a person in existence or to a proper address could be taken out of the mail before it was delivered to them?

A. No, sir. In some cases I made an arrangement with the parties to whom they were addressed.

Q. Those were few, I suppose, as compared with the others?

A. Well, no, sir.

Q. Was it the majority of them?

A. I don't know. I think so, though.

Q. You signed the name of a person who had no existence?

A. Yes, sir.

Q. You addressed it to a person whom you knew had no existence?

A. That is so of some of the letters.

Q. And purposely addressed it to places that did not exist and purposely addressed to places where they could not be delivered?

A. Yes.

Q. What were those letters—what are called "nixes?"

A. Yes.

Q. Did Mr. Wight have charge of the "nixes" table?

A. I think he would, in the absence of Mr. Swan.

54 Q. You say these letters in the regular course would be taken up by the carriers?

A. Yes, sir.

Q. Are you not mistaken?

A. They would be taken up by the collectors, which are carriers. The carriers in some cases do the collecting.

Q. In the Bulh block they would be taken up by the collector, and not by the carrier?

A. I don't know who does the collecting in that building.

Q. Is there any letter that you spoke of or that you have testified to that would be taken up except by a collector?

A. I don't know now; I did know who did the collecting at this time—who the carriers were.

Q. You don't know now?

A. No, sir; I don't.

Q. Of course, under your arrangement, after the letters came to Mr. Swan's desk, they would not get into the hands of a carrier?

A. No, sir.

Redirect:

Q. You said "this arrangement," meaning the arrangement which you made with reference to these letters, was made with reference to the whole 70 letters; is that true?

A. No, sir.

Q. Then what do you mean?

55 A. With a great many of the letters they were to be delivered to the parties to whom they were addressed.

Q. These letters in these particular cases—it was so arranged that they should go into Mr. Wight's hands?

A. Yes.

Q. And when you say the arrangement with reference to all the letters was like this, was that true?

A. No.

Mr. DUFFIELD: That was not my understanding.

Q. You did not mean they were all to go into Mr. Wight's hands?

A. No, sir.

Q. Would any of those previous to July 28th?

A. Some of them went into Mr. Wight's hands through men who assisted me in throwing those letters.

Q. Those letters were test letters?

A. Yes, sir; in fact, he knew all of them were test letters except the last three or four.

Q. Excepting those you speak of here? You said, in answer to Mr. Duffield, that these letters were purposely addressed to places where they could not be delivered. These letters addressed in Detroit could be delivered?

A. Yes.

Q. You said the Detroit letters would be advertised, and if they were not called for in a certain length of time would be sent to the dead-letter office?

A. Sent to the dead-letter office.

56 Q. Did you know at the time you mailed the letter what name you had signed to it?

A. I did at the time. I don't remember now.

Q. If that letter had gone to the dead-letter office would you have known it?

A. I think I would have known what name I signed to it.

Q. You knew the addresses, anyway, did you not?

A. Yes.

Q. If you had not had an arrangement with Mr. Swan could you have gotten it back from the dead-letter office?

A. I think I could.

Q. Don't you know whether you could or not?

A. Yes; I know that I could.

Q. Then, as I understand it, all the letters you told the Col. about were not put in to test Mr. Wight?

A. No, sir; with the exception of one or two, I tested all the employés in the office.

Recross:

Q. This letter addressed to Detroit could not be delivered to the person to whom you addressed it, because you say that person had no existence?

A. Not unless some one came and gave that name and got that letter. That is the only way it could be delivered.

Q. How could you get any letter containing money out of the dead-letter office?

A. By sending a description of the letter.

57 Q. Which appeared to be sent by a person whose name was not yours?

A. If there was no such name and I sent a description of the letter that is nearly a correct description I could get the money.

Q. By reason of your official position?

A. I don't know. I think I could, anyway.

Q. The statute requires that articles of value in these letters should be registered and an account kept of them, and they should be turned over to the owner or writer?

A. Yes.

Q. Do you mean to say that the Government would deliver to you money sent in any other name than your own?

A. They would not do it unless they were satisfied that the money belonged to me. If I could give sufficient reasons for not knowing they would deliver it to me.

Q. You think the Government would take the risk of turning it over?

A. I think so, if I could give proper reasons for not knowing what name was signed to it.

Redirect:

Q. State whether or not when you assumed those names they were intended to be delivered to you.

A. Yes, sir.

Q. Then they could be delivered to the person whose name was there?

A. Yes, sir.

58 Juror HICKEY: When you asked the defendant to go with you into the postmaster's office and he would not be persuaded, did I understand you to say that finally he said he would not go?

A. He finally said that he would not go; yes, sir.

Q. When you had hold of his hand I understand the letter dropped?

A. Yes.

Q. Where did he drop it down?

A. There is a window that is partially underground in this building across the road, and he dropped it down in there, and a young man standing by said, "Mister, you dropped one of your letters," and as he dropped it I said, "Charlie, it is a little too late for that." The young fellow jumped down where the window is and picked up the letter and handed it to me.

Q. That is the same letter that is here?

A. Yes, sir.

59 CHARLES F. SWAN, sworn on behalf of the Government.

Examined by Mr. WILKINS:

Q. What is your business?

A. I am superintendent of the city division of the post office here.

Q. How long have you been in that position?

A. In the service or in that position?

Q. In that position?

A. Six years.

Q. How long have you been in the service?

A. 20 years.

Q. Do you know the defendant?

A. Yes, sir.

Q. How long has he been in the service?

A. I should judge, for 12 or 13 years. I have no positive knowledge.

Q. What was his position just previous to his arrest?

A. He was my assistant.

Q. How long was that?

A. What, after my taking hold of that position in Detroit?

Q. Yes.

A. That would be not quite six years.

Q. Do you recollect a letter addressed to Montevideo, Cook county, Michigan, to Oscar Singleton?

A. I do, sir.

Q. When did you first know anything concerning that letter?

A. That was one of several given me by the inspector in the course of his investigation of this office, to be used as a decoy letter.

60 Q. That letter, I understand, was mailed near Hull Bros.'—in the box at Hull Bros.' Who would that be collected by—by what carrier?

A. In answering that question I will have to explain that the inspector, in the course of his investigation here, had mailed two letters—the address of the other one I have forgotten—which was subsequently recovered along with this. It was intended to have been

taken by the regular carrier, who also has a key to that box. The boxes in the business district are collected by carriers and also by collectors, who are regular letter-carriers, who are required to perform that duty as well as the making of deliveries at the hotels in the morning and evening.

Q. You say that letter was intended to be collected by the regular carrier?

A. It was.

Q. Do you remember whether it was collected by the regular carrier or not?

A. I don't know positively. I assume it was not.

Q. If not collected by the regular carrier you say it would be collected by another man, who was a letter-carrier?

A. Yes, sir.

Q. Who also delivered letters at the hotels?

A. Yes, sir.

Q. So it was collected by a letter-carrier?

A. It was.

Q. What would have been done with that letter after it got into the letter-carrier's hands at that box?

61 A. It should have been brought in by the carrier and placed on the receiving table. It should have been first stamped by one of the cancelling clerks, then assorted in the regular way in which separations are made—east and west, north and south.

Q. This being a letter addressed to Cook county, Montevideo, Michigan, what would be the course?

A. Placed in the Michigan mail, and afterwards laid aside by the distributors. Any letters of any such kind go to Mr. Fuller, the superintendent of mail, and such letters that we get are held for my approval, addressed to any such post office in the State, and they are laid in a bundle on my table, to be treated as matters to be sent to the dead-letter office.

Q. How would such a letter be marked?

A. "No such office in State named."

Q. After being put on your table, then what would be done with it? Would any further search be made for it?

A. No, sir; it would be put in the nixes box and treated as unmailable matter—placed in the nixes box assigned for that purpose, if it is misdirected and domestic matter.

Q. That is, sent to the dead-letter office?

A. Yes, sir.

Q. What would be done with it?

A. It would be opened to ascertain the writer's name, and if it could be ascertained it would be returned to the writer, at the office from which it originated.

62 Q. What become of this letter?

A. Not to answer the question directly, I was informed the letter was mailed. I would not know it of my own knowledge, except as the inspector told me. Mr. Burt was then in charge when I was away, and on my return I was informed that these letters had been put in.

Mr. DUFFIELD: Had you any arrangement as to this letter with the inspector?

A. As I said, with all letters they were to be returned to me.

Q. For what?

A. If it subsequently turned up.

Q. Turned up where? This letter was put in for what purpose?

A. For the purpose of testing the carrier in this case.

Q. That came through the hands of the carrier in safety, and Mr. Fuller had placed it on your desk and you had seen it there; suppose that had occurred?

A. I should have taken it out and returned it to the inspector.

Q. Did you ever see that letter?

A. Not after it was returned; I did before.

Q. In whose hands did you see it then?

A. In the inspector's.

Q. Never saw it after?

A. No, sir.

Q. Do you know of your own knowledge or from what Mr. Wight has said what became of that letter?

Mr. DUFFIELD: Let him state what Wight said.

A. At that time no inquiry was made regarding it—at
63 that particular time.

Q. Do you know anything concerning a letter addressed to Hastings, Farwell & Co., No. 60 Lake View building, Detroit?

A. I do, sir.

Q. What do you know concerning that letter?

A. It was given me by Inspector Smith, with instructions that I place it on the case of what is called mixed matter, not known to the other distributors. It would be placed so Wight would work it in the absence of Phelps.

Q. What do you mean by that?

A. Distribute it into the general delivery.

Q. What would be their regular course of business in the office with reference to that?

A. Such a letter would be put in the nixes.

Q. Suppose a letter came addressed to Henry M. Duffield, Moulton St., Detroit?

A. Drop Mr. Duffield's name; he is too well known.

Q. No; I am asking you about as to Col. Duffield.

A. Assuming that the distributor did not know Col. Duffield, it would be placed in the matter to be searched by the searcher in the box marked nixes.

Q. Then nixes don't mean letters that anybody can deliver?

A. No, sir.

Q. What would then be done with it?

A. They would be taken out by the searcher and put in alphabetical order.

Q. Suppose it was addressed to Col. Duffield?

64 A. Do you mean after the ordinary distributors would handle it?

Q. Yes.

A. It would be placed in the matter to be distributed by Mr. Wight at that time.

Q. What should he do with it?

A. Put it in the proper hands or mark it.

Q. What should have been done with this letter of Hastings, Farwell & Co., Lake View building? I mean before you saw it, what would be the proper course?

A. It should be placed in that matter handled by Mr. Wight after it had passed through Mr. Fuller's hands and been put into the nixes. It would then be taken out by the searchers and assorted in alphabetical order, and the searcher would take that letter, and failing to find it he would put here a check mark, indicating that it had gone through his hands, and the matter would be again placed in another set of pigeon-holes, to be subsequently reviewed by me, and finally placed in the general delivery, to be returned to the writer.

Q. How long would it be kept there?

A. It would be advertised and kept there three weeks.

Q. That would have been the course of this letter?

A. Yes.

Q. If any person came and gave that name he could get it?

A. On proper identification.

Q. On showing he was the person for whom it was intended?

A. Yes.

65 Q. What did become of that letter?

A. It was merely placed among the mail. I don't know what became of it afterwards, to my own knowledge.

Q. Did you ever see it again?

A. No, sir.

Q. Did it come among the nixes?

A. No, sir.

Q. Did you search for it?

A. Yes, sir.

Q. And never saw it afterwards?

A. No, sir.

Q. There was a letter addressed to Phœbe Havens, 306 South Moulton St., Detroit, mailed at the corner of the Griswold House; do you remember about that letter?

A. Something faintly.

Q. What would have been the course of that?

A. It would have taken the same course as the Hastings, Farwell & Co. letter; been brought in by the regular carrier or collector?

Q. Is the collector a carrier in that case, too?

A. He is.

Q. Suppose it had been mailed at five minutes past seven in the morning, at the Griswold-House box and the regular carrier got it and brought it in?

A. I think at that time it would have been brought in by the collector.

Q. He is also, you say, a letter-carrier?
A. He is, sir.
Q. Do you know anything about what became of that letter?
A. I don't know.
66 Q. A letter addressed to 306 South Moulton St., Detroit, would go through an examination?
A. Yes.
Q. It would go into Mr. Wight's hands?
A. Yes.
Q. You say if it had come through his hands in safety you would then have delivered it to Smith?
A. Yes. I had not the handling of the letter during that time.
Q. That is, you didn't have anything to do with the letter?
A. No, sir.
Q. Did you ever see that letter at all? After it came to the office, I mean.
A. No, sir.
Q. That letter would have been advertised, and if any person had called for it and given the right name or shown that he was the person for whom it was intended it might have been delivered at the office?
A. It might.
Q. It would have been?
A. Yes.
Q. There was a letter mailed and addressed to Asa P. Jones—mailed in the Buhl Block about three o'clock in the afternoon—who was that taken up by?
A. By the regular carrier for that building.
Q. A regular letter-carrier?
A. Yes.
67 Q. Crescent, York county, Mich., Maple Leaf township. Would that have gone through the same course as the Oscar Singleton letter?
A. Yes.
Q. What were the arrangements with Smith with reference to that letter?
A. I was requested to mail that letter, which I did in the presence of the inspector, and when the carrier came in I took his collection myself and picked up the letters and found that the letter was there. If my recollection is right, I think it was immediately turned over to Mr. Fuller.
Q. With all the rest of the mail?
A. No, sir; that single letter was picked out of the mail.
Q. Are you certain of that?
A. I am almost sure.
Q. Were you so instructed?
A. That was the understanding with the inspector—that is, I was to see that the letter was there. Now, I won't be positive whether I gave it to Mr. Fuller or not.
Q. Would you adopt that course with any other letters than decoy letters if you should happen to see them?

A. I might or I might not.

Q. Mr. Fuller was the regular man to whom such letter should go?

A. Yes, sir.

68 Q. He was the superintendent of mails?

A. Yes, sir.

Q. He was the regular person to have such letters?

A. Yes, sir.

Q. Did you see that letter afterwards?

A. I never saw it again until long afterwards.

Q. When did you see it?

A. After it was picked up over here by the young man, in the basement of the Campau building, and handed to the inspector.

Q. Was that the same day it was mailed?

A. The same day.

Q. Were you down at the time of Mr. Wight's arrest?

A. I was.

Q. Do you remember what time he left the office?

A. I was in the postmaster's room at the request of the inspector. The door was closed and I heard Mr. Wight order the man to close the windows. That is all I know of it.

Q. Did you make any search for this letter?

A. I did not.

Q. You say you were in the street when Mr. Wight was arrested?

A. Yes, sir.

Q. Did you go with him into the postmaster's room?

A. I did.

Q. Were you present at the conversation?

A. I was.

Q. Did you hear Mr. Smith's testimony on the stand?

A. Only partly.

69 Q. Do you remember what the conversaation was—substantially, I mean?

A. It was merely to this effect, that Mr. Wight acknowledged having taken that letter.

Q. That is which letter?

A. That letter that was dropped in the basement of the Camau building. Mr. Wight said, "That is my first offence." The inspector spoke to him and said, Your first offence? Well, no, he said, my second. He asked what was to be done with him, and whether or not the affair could not be settled. The inspector told him there was no means of settling it, and began then to question him and also to search him.

Q. Do you remember what Wight said? In the first place, were there any promises or inducements held out to him to speak?

A. Not positively. Nothing, with the exception, perhaps, that I made the remark myself. He spoke voluntarily of wanting to own up.

Q. He spoke of that?

A. Yes. I question him and I says, Charlie, what became of one of those letters that I referred to here in my testimony, and I asked

him if he remembered it. He said he didn't know. He said he thought probably he took that. He said he didn't know the address, did not notice the address, and could not tell me as to the address of any of them, but it was about that time; and he also further owned or further spoke of another letter, to which, I
70 think, the inspector or myself, I won't be positive which, made an allusion—one of the letters in testimony here now—and he said it was also possible that he took that; that he had no recollection as to the letter or the amount in the letter.

Q. How many letters in all did he say he had taken?

A. He said he had taken four.

Q. Do you remember of his making a written statement?

A. I think I remember his saying that he was perfectly willing to make a written statement and of his signing it and wanting to know where to sign it.

Q. Was that made at his request?

A. I think he made a statement that he wanted to make a statement. I am not positive as to that.

Q. You don't know whether anything was said to him about it first or not?

A. No; I don't.

Q. Will you look at that paper? Is it the same paper?

A. I recognize my signature there.

Q. There is another statement?

A. That is all I know of, sir.

Cross-examination by Col. DUFFIELD:

Q. With reference to each one of these letters there was a previous express arrangement by which the regular course of mail should not be carried out?

A. How?

71 Q. By which they should not take the regular course of mail.

A. No—that is, as to their final disposition; yes, sir.

Q. And that arrangement was made before they were mailed?

A. Yes, sir; that was understood.

Q. And the employés of the post office or those of them who were in the secret were instructed to watch for these particular letters and carry out that part of the arrangement?

A. Yes, sir.

Q. About how many of these decoy or test letters had been put through your office by Mr. Smith from May until July?

A. I heard Mr. Smith's testimony and I think he rather exaggerates the number. I should think half that number would be fully the number that was sent through, so far as I am aware.

Q. He may have been testing you?

A. Possibly so.

Q. Was Wight much agitated at the time of the interview in the post office?

A. Not in the street. He seemed rather self-possessed and determined to take the matter coolly.

Q. But before the matter closed?

A. He became very much agitated. I don't think I ever saw a man suffer so mentally as he did.

Q. And before he made and signed this statement was he in that condition?

A. He was, sir.

72 Q. And really didn't know what he was about?

A. I would not say that, because in the interview he talked calmly.

Q. Did he read over the statement at all?

A. It was read to him, I believe.

Q. And he was willing to sign anything?

A. He said he was perfectly willing to sign such a statement, and he wanted to make restitution at once.

Q. Was there anything said to him that that statement would not be used against him?

A. I don't think so, sir; I don't think so; not a word. It came voluntarily from him. I was in and out of the room; I was not there all of the time.

Q. Did the inspector request a written statement?

A. He requested him to sign it—asked him if would sign such a statement. He said that he would, cheerfully.

Q. How long did you say Wight had been with you as your assistant?

A. About five years and a half, as near as I can recollect.

Q. And before that how long had you been there?

A. I was not in that department at that time; I was in the mailing department. He was in the service, however, prior to that.

Q. What had been his reputation in the office for integrity and honesty?

A. As far as I knew, perfect*ly*, because I should not have retained him if it had not been. It was on my recommendation he was made my assistant.

73 Q. Subsequently to that, while he was working under you, what had been his reputation for honesty and integrity?

A. So far as I knew, very good. I would have trusted him to the utmost.

Redirect:

Q. You say that statement was signed at the request of Post-Office Inspector Smith?

A. I think that is correct. I think Mr. Wight asked him, Where shall I sign?

Q. Do you know whether he was requested by anybody to sign? Now, I ask you whether that statement was not drawn out at his own request.

Objected to as leading. Objection sustained.

Q. Are you certain about that statement, as to whose request it was drawn up or written out? You stated you were in and out of the room at different times.

A. I could not positively say. My recollection, as I said before, is that he desired to make restitution and did make restitution—handed back the inspector's money to him at the time—and stated that he would cheerfully sign any paper that he wished him to and bear the consequences of it, or something to that effect. I cannot recollect the conversation that occurred prior to that.

Q. Then, you don't know whether this statement was drawn out at his request or at the inspector's request? Who drew out this statement?

A. That I can't recollect. I know it was signed and I was
74 requested to witness it, and I remember it was read to him. I didn't draw the statement, I think.

Q. You know it was read to him and you signed as a witness?

A. I know that.

Q. The Col. asked you if he was not perfectly willing to sign anything. I ask whether or not he was in such a condition as to know what he was doing—to know what he was signing.

A. Oh, I could not say that. As I say, he was greatly agitated during the time I was there. We were there several hours. At first he was not so, apparently, quite at at ease, or at least he didn't seem to feel the terrible charge against him.

Q. Did he fully understand this statement?

A. I remember his nodding his head and saying that was quite correct, or words to that effect.

Q. Col. Duffield asked you if the employés in the secret were instructed to carry this course out. How many knew about these test letters?

A. Burt, Fuller, and myself.

Q. As to all of them?

A. Not as to all, only as to some.

Q. State whether under the previous arrangement they were to take the regular course and as to whether this arrangement was made before they were put out.

A. In the event of their coming safely to my hands, the understanding with the inspector was that they should be returned to me.

75 Q. Were they or were they not to take the regular course of mail until they reached the defendant's hands?

COURT: The evidence already shows that.

Plaintiff rests.

Mr. DUFFIELD: I object to this letter that was introduced, as it is not such a letter as is contemplated by the statute.

Mr. Wilkins reads the defendant's statement to the jury.

Mr. DUFFIELD: I ask your honor to direct the jury to find a verdict of acquittal in this case. My only testimony will consist of witnesses as to character. If your honor will overrule the motion formally I will put in the evidence and argue the matter afterwards.

COURT: I will do so.

133 And petitioner's counsel, further to maintain the issue on his part, introduced in evidence the record of the circuit court of the United States for the eastern district of Michigan in the said cause of The United States *vs.* Charles Wight, as remitted from the district court of the United States, which was as follows:

(Printing of transcript of record from district court, including indictment, omitted by stipulation. See side page 7.)

143 (Printing of motion to quash indictment omitted by stipulation of counsel. See side p. 18, *ante.*)

144 (Printing of plea omitted by stipulation.)

145 (Printing of entries of trial and verdict omitted by stipulation.)

146 (Printing of motion for a new trial omitted by stipulation. See side page 20, *ante.*)

147 (Printing of request to charge omitted by stipulation. See side page 22, *ante.*)

148 (Printing of motion in arrest of judgment omitted by stipulation. See side page 23, *ante.*)

150 (Printing of order of dist. court certifying cause to circuit court omitted by stipulation. See side page 25, *ante.*)

(Printing of certificates of clerks of district and circuit courts omitted by stipulation.)

152 (Printing of entries of argument and denial of motions for new trial and in arrest of judgment omitted by stipulation. See side pp. 27 & 28.)

* * * * * * *

153 The United States, to maintain the issue on its part, offered in evidence, against the objection and under exception by the petitioner, the further record in the cause of The United States *vs.* Charles Wight, in the circuit court of the United States for the sixth circuit and eastern district of Michigan, as follows:

154 At a session of the circuit court of the United States for the sixth circuit and eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, in said district, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Hon. Howell E. Jackson, circuit judge; the Hon. Henry B. Brown, district judge.

UNITED STATES OF AMERICA
vs.
CHARLES WIGHT.

The defendant being personally present in court, as well as by his counsel, Henry M. Duffield, Esq., and the court having its attention called to its records, made and entered in the above-entitled cause on the twelfth day of March, A. D. 1889, by the return of Joseph H. Nicholson, superintendent of the Detroit House of Correction, to the writ of *habeas corpus* heretofore allowed by this court on the petition of the above-named Charles Wight, and upon inspection of said records, so made and entered as aforesaid, it satisfactorily appears to the court that the same is not a full and correct record of the order which was in fact made by this court on the twelfth day of March aforesaid, in this, that it fails to show the order of this court which was duly made on the said twelfth day of March, remitting said cause out of this court into the district court of the
155 United States for the eastern district of Michigan: therefore, after hearing the said Charles Wight, by his counsel, in opposition thereto, this court, upon its own motion, based upon its recollection of the facts of the making of said order remitting said cause as aforesaid into said district court, now orders and directs that the same be entered now as of the said twelfth day of March, one thousand eight hundred and eighty-nine, according to the facts thereof, which are as follows:

At a session of the circuit court of the United States for the sixth circuit and eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on the twelfth day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Hon. Howell E. Jackson, circuit judge; the Hon. Henry B. Brown, district judge.

UNITED STATES OF AMERICA
vs.
CHARLES WIGHT.

The defendant being personally present in court, as well as by his counsel, Henry M. Duffield, Esq., said United States being represented by C. P. Black, United States attorney, and Charles T. Wilkins, assistant United States attorney, and the said United States attorney objecting to the consideration of said cause on the part of this court for the reason that there was no authority in law for the district court to remit said cause to this court after verdict had in said district court: therefore the court, upon its own motion,
156 hereby remits said cause back into the said district court for the eastern district of Michigan for such action as said district court shall see fit to take.

(Printing of certificate of clerk of court omitted by stipulation.)

157 (Printing of order *nunc pro tunc* and certificate of clerks of courts omitted by stipulation. See page 154, *ante*.)

161 And because the said several matters do not appear of record in this matter, we, the said circuit judge and district judge, have, at the prayer of the petitioner, on this third day of October, A. D. 1889, signed this certificate.

HOWELL E. JACKSON,
Circuit Judge.
HENRY B. BROWN,
District Judge.

162 (Printing of allowance of appeal omitted by stipulation.)

163 (Printing of certificate of clerk of circuit court omitted by stipulation.)

Endorsed on cover: E. Michigan C. C. U. S. No. 1521. Charles H. Wight, appellant, *vs.* Joseph H. Nicholson, superintendent of the Detroit House of Correction. Filed December 3, 1889.

Office Supreme Court, U. S.
FILED
JAN. 7 1890
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States

CHARLES H. WIGHT, *Appellant.*
vs.
JOSEPH H. NICHOLSON, *Superintendent of the Detroit House of Correction.*

OCTOBER TERM, 1889.
No. 1521.
Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF FOR APPELLANT.

HENRY M. DUFFIELD,
Att'y for Appellant.

IN THE

Supreme Court of the United States

CHARLES H. WIGHT,

vs.

JOSEPH H. NICHOLSON,
Superintendent of the Detroit House of Correction.

OCTOBER TERM, 1889.
No. 1521.
Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

The appellant was indicted in the District Court of the United States for the Eastern District of Michigan, at the June term thereof, A. D. 1888, under the name of Charles Wight, and charged "with unlawfully secreting and embezzling certain letters" alleged to have come into his possession in the regular course of his official duties as an employe in one of the departments of the postal service, and which were intended to be carried by a letter carrier, and also for "unlawfully and wrongfully stealing and taking out of certain letters which had come into his possession in the regular course of his official duty, certain valuable things." (Record, pp. 4 to 9.)

He objected by his counsel to the jurisdiction of said court under said indictment, and moved to quash the indictment upon the ground that it did not charge any offense over which that court had jurisdiction. (Record, p. 10.)

Afterwards on the 30th day of November, A. D. 1888, he was tried in said District Court, and a verdict of guilty was rendered against him. The testimony for the government, upon which said verdict was based, established beyond question that

the letters which petitioner was charged with having embezzled, were false and spurious, addressed to fictitious persons, and directed to non-existing places of delivery. They were written by the government detective, who, together with one of the employes of the Detroit post office, put them into letter boxes near the post office in the said city of Detroit, under an arrangement with the post office authorities, that the said letters should be taken up after they had passed through the defendant's hands, and should be by the employes in the post office returned to the detective who mailed them, and not go on through the mail in the ordinary course. In each of said letters said detective enclosed money in such a way that it was quite apparent that the envelope contained money, and according to the detective's own testimony they were purposely made up by him in this form to call the attention of the employes, through whose hands they should pass, to the fact, that money was enclosed in them. The letters which defendant was charged with having taken, were a few of over seventy (70) similar letters which the same detective had put in the Detroit post office in the space of two months. (Record, p. 36.) On the 1st day of December, A. D. 1888, his attorney moved the court to arrest the judgment on the verdict upon the the same grounds alleged in his motion to quash, and also filed a motion for a new trial on the ground that the evidence introduced in said cause did not establish or tend to prove any offense over which said District Court had jurisdiction, in that it clearly appeared from the testimony introduced by the attorney for the government, that none of the letters which it showed the appellant to have embezzled, nor those out of which he took the valuable things were intended to be carried by a letter carrier or conveyed by mail. (Record, pp. 10 and 12.)

At the next term succeeding the making of said motions in arrest of judgment and for a new trial, and on the 29th day of January, A. D. 1889, the said District Court of its own motion, and without any application from the United States District Attorney, entered an order remitting said indictment into the Circuit Court of the United States for said District; and on the 15th day of February, A. D. 1889, said cause was duly certified into and filed in said Circuit Court.

Afterwards on the 11th day of March, A. D. 1889, each of said motions was argued in said Circuit Court of the United States, and on the 12th day of March, A. D. 1889, was denied, but no other proceedings were had, and no other order was an-

nounced or entered in said Circuit Court of the United States. (Record, p. 13.)

On the 23rd day of July, A. D. 1889, the appellant presented his petition addressed to the Judges of the Supreme Court of the United States, to the Honorable John M. Harlan, an Associate Justice of this honorable Court, praying for a writ of *habeas corpus*. Thereupon his Honor, the Asssociate Justice, on the 20th day of August, A. D. 1889, made an order that said petition be remitted to and filed in the Circuit Court of the United States for the Eastern District of Michigan, and that all future proceedings therein be had in the said Circuit Court, and that a rule forthwith issue from said Circuit Court against the said Marshal of the United States for the Eastern District of Michigan, and said Superintendent of the Detroit House of Correction, returnable before said Circuit Court within three days after service thereof, and if said Court should not then be in session then on the first day after it should be in session to show cause why a writ of *habeas corpus* should not issue as prayed for in said petition (Record, p. 14). On the 16th day of September, A. D. 1889, the matter came on to be heard upon the answer to said Circuit Court rule, and was by the Court adjourned to the 26th day of September, A. D. 1889, on which day a writ of *habeas corpus* was issued returnable on the 30th day of September, A. D. 1889, and on said last named day a hearing upon said petition was had before their Honors, the Circuit and District Judges for said District, and the said Circuit Court by its order remanded the petitioner and discharged said writ of *habeas corpus*.

This order of said Circuit Court was not based upon the record of said Circuit Court, or the record of said District Court, in the cause in which the petitioner was sentenced, as the said several records remained of record at the date when he was sentenced, nor as the said several records remained of record at the date when he filed his petition for a *habeas corpus*, but on the contrary thereof, they were altered and changed. And the said Circuit Court at the hearing upon the return to said writ of *habeas corpus* against the objection and exception of petitioner, amended and changed the record in said Circuit Court and entered therein against the objection and exception of petitioner, an order *nunc pro tunc*, "remitting said cause back into the District Court for such action as the District Court shall see fit to take."

The term of the said District Court at which petitioner was tried expired and ended on the first Monday in March, A. D. 1889,

and the term of said District Court at which petitioner was sentenced, expired and ended on the first Monday in June, A. D. 1889, and the term of the Circuit Court of the United States for the Eastern District of Michigan, to which [redacted] petitioner's cause was certified by the District Court, expired and ended on the first Monday in March, A. D. 1889. The succeeding term thereof began on the first Tuesday in March, A. D. 1889, and expired on the first Monday of June, A. D. 1889. And the term of said Circuit Court, at which said Court assumed to enter the *nunc pro tunc* order amending its record, was not the term of the Circuit Court at which petitioner's case was argued.

The said order of the Circuit Court amending the record and entering said order *nunc pro tunc*, was not made while petitioner was present in court in said cause either personally or by counsel, but that petitioner was present in said Court by reason of being brought therein by the Superintendent of the Detroit House of Correction in response to the writ of *habeas corpus* aforesaid, and [redacted] his said counsel was present in said Circuit Court to represent him in that case only.

No motion whatsoever was made by the District Attorney for the United States, in the case in the Circuit Court of the United States vs. Charles Wight to amend the record therein, and no notice was given to either the petitioner or his attorney of any motion by the United States District Attorney for said District to amend said record, and no objection was ever made by said District Attorney of the United States to the jurisdiction of said Circuit Court of the United States to hear the cause of your petitioner except an informal objection by said United States District Attorney to the jurisdiction of the Circuit Court based upon the want of power in the District Court to make the order remitting said cause into the Circuit Court after a verdict of guilty in the District Court. This objection was made before the argument of the motions in arrest of judgment and for a new trial in the Circuit Court of the United States, which arguments were heard, however, without entering the objection of record. This order was made against the appellant's objection and exception and immediately and before the same had been engrossed and enrolled upon the journal of the said United States Circuit Court, and in fact before the terms of the same had been settled upon and reduced to writing was offered in evidence against the objection and excep-

tion of [redacted] petitioner, in response to the case made by your petitioner under his aforesaid petition for a writ of *habeas corpus*.

March 12th, 1889, an order was entered in the District Court denying the motion for a new trial, vacating the previous order of the District Court certifying the case into the Circuit Court, as improvidently made, and sentencing the appellant to imprisonment at hard labor in the Detroit House of Correction for the term of two years. (Record, p. 3.)

ASSIGNMENT OF ERRORS.

The following objections are made to the validity of the order sentencing the appellant, and the decision and orders of the Circuit Court in entering the order *nunc pro tunc* and discharging the writ of *habeas corpus* and remanding the petitioner to custody, and the decision of said Circuit Court, is alleged to be erroneous in these respects:

First. That the indictment against the petitioner described no offense over which the Federal Court had jurisdiction, because it did not allege that the letters which the petitioner was charged with embezzling had not been delivered to the parties to whom they were directed, and because it did not charge that the valuable things which the petitioner was charged with having stolen and taken out of the letters, were stolen and taken out of letters which were intended to be conveyed by mail or carried and delivered by a letter carrier.

Secondly. That irrespective of the question of the insufficiency of the indictment, the testimony for the government did not tend to prove any offense against the United States.

Thirdly. The petitioner was sentenced by the District Court when in law and in fact his cause was pending in the Circuit Court, and the order of the District Court, denying the motion for a new trial, vacating the order remitting the cause into the Circuit Court, and sentencing the prisoner, was without jurisdiction and void.

Fourthly. The Circuit Court had no jurisdiction or authority to enter the *nunc pro tunc* order remitting the cause to the District Court because: (*a*) It was not based upon any entry or memorandum made at the time, but was entered upon the unaided

recollection of the judges; (*b*) It was entered at a term long subsequent to the trial and sentence of the appellant, and after the appellant had served a portion of such sentence; (*c*) It purports to change the record of the appellant's trial and sentence upon the hearing of his case upon a writ of *habeas corpus*; (*d*) The Circuit Court had no power at any time of its own motion to remit the case back to the District Court.

BRIEF.

The indictment against the petitioner described no offense over which the Federal Court had jurisdiction, because it did not allege that the letters which the petitioner was charged with embezzling had not been delivered to the parties to whom they were directed, and because it did not charge that the valuable things which the petitioner was charged with having stolen and taken out of the letters, were stolen and taken out of letters which were intended to be conveyed by mail or carried and delivered by a letter carrier.

The petitioner was proceeded against under Section 5467, U. S. Revised Statutes. So much of it as applies to his case is as follows:

"Any person employed in any department of the postal service who shall secrete or embezzle * * any letter * * which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any * * * letter carrer * * * and which shall contain any pecuniary obligation or security of the Government, * * * * * * * any such person who shall steal or take any of the things aforesaid out of any letter * * * which shall have come into his possession either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed," shall be punished by imprisonment, &c.

I assume, that unless the letters were mail matter within the meaning of the statute, the Federal Court had no jurisdiction to try the petitioner for embezzling them or for stealing or taking out of them any article of value. And that if the letters were not so described in the indictment as to constitute them mail

matter, an objection to the jurisdiction of the court could be based on such insufficient description.

I am aware that this court in the case of

Ex-parte Yarbrough, 110 U. S., 651, and
Ex-parte Parks, 93 U. S., 18,

holds that "in general the sufficiency of an indictment will not be inquired into by this court upon a writ of habeas corpus." But in each of these cases the decision of the court expressly reserves a case where "The inferior court had exceeded its jurisdiction or was not competent to act."

Ex-parte Parks, 93 U. S., 22,

and declares "that it is not only within the authority of this court, but it is its duty to inquire into the cause of conviction when the matter is properly brought to its attention, and if found to be as charged, a matter over which such court had no jurisdiction, to discharge the prisoner from confinement."

Ex-parte Yarbrough, 110 U. S., p. 653.

The true distinction is that although this court will not, upon *habeas corpus*, review general questions of law or objections to rulings which are not aimed directly at the jurisdiction of the court below to try the offence charged, (and generally, the sufficiency of an indictment is one of these questions,) yet it will, upon *habeas corpus*, examine an indictment sufficiently to determine whether, under it, the prisoner could be convicted of any offense against the laws of the United States.

And if the indictment does not describe any offense of which the court below could lawfully take jurisdiction, the prisoner will be discharged.

To quote from *Ex parte Siebold*, 100 U. S., p. 377, "personal liberty is of so great moment in the eye of the law, that the judgment of an inferior court affecting it, is not deemed so conclusive but that the question of the court's authority to try and imprison the party, may be reviewed on *habeas corpus*."

To illustrate, suppose the indictment against the petitioner had simply charged him with embezzling letters without any allegation connecting them with the United States mail, it would seem clear that the Federal Courts could not try the cause,

because the jurisdiction of Congress and of the Federal Courts is derived solely from the constitutional authority to Congress to establish Post Offices and Post Roads, and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the Government of the United States or in any department or officer thereof." (U. S. Constitution, Art. 1., Sec. 8, Subs. 7 and 17.)

In the case of *Ex parte Siebold*, 100 U. S., p. 371, the constitutionality of the statute under which the petitioner was convicted, was sustained solely upon the ground that the election at which his misfeasance was charged *was an election at which a representative to the United States Congress was to be voted for.*

If the indictment in that case had not alleged that the misconduct of the defendant which it charged, occurred at an election for a representative to the United States Congress or other Federal officer, it seems to be conceded that it would not have given the Federal Court jurisdiction.

So in all cases this Court will examine the indictment sufficiently to determine whether it contains the necessary jurisdictional averments.

The indictment in question does not.

The law is well settled that:

1. It is not the province of Courts to extend criminal statutes so as to embrace cases not plainly and clearly within their terms.

2. That where an exception is stated in the enacting clause of a statute, it is necessary to negative it in order that a description of the crime may in all respects correspond with the statute.

See opinion of Severens, J., in U. S. v. Davis, 33 Fed. Rep., p. 67, citing

1. Chitty Crim. Law, 283.
1. Bish. Crim. Pro., Sec. 636.
U. S. v. Carll, 105 U. S. 611.
U. S. v. Britton, 107 U. S., 655; see p. 670.
And see opinion of Metcalf, J., in 11 Cush., p. 130; read p. 134, foot, et seq.

A very clear rule as to the sufficiency of an indictment is thus stated in Commonwealth vs. Young, 15 Grat., 664, and cited with approval by Paul, J., in U. S. vs. Slenker, 32 Fed. Rep., 691.

"If the indictment may be true, and still the accused may not be guilty of the offense described in the statute, the indictment is insufficient."

In the case at bar the indictment nowhere charges in *ipsissimis verbis*, that the letters "were intended to be conveyed by mail."

It charges that the respondent:

First Count. "Was a person employed in one of the departments of the postal service of the United States," and did "unlawfully and wrongfully secrete and embezzle a certain letter which came into his possession in the regular course of his official duties, and which was intended to be carried by a letter carrier," which contained "certain treasury notes and certificates of deposit, the property of one Angus M. Smith, which said letter and said pecuniary obligations were enclosed in an envelope and addressed Oscar Singleton, Montevideo, Cook Co., Mich."

Second Count. "Was a person employed in one of the departments of the postal service of the U. S. * * * unlawfully and wrongfully did steal and take out a certain letter which had come in possession of him in the regular course of his official duties, certain pecuniary obligations and securities of the government of the U. S." (same as in first count) "which pecuniary obligations * * * were the property of one Angus M. Smith, and were enclosed with said letter in an envelope addressed Oscar Singleton, Montevideo, Cook Co., Mich." "That neither said letter nor said pecuniary obligations * * * had been delivered to the party to whom it was directed, and that said Charles Wight did steal and take said pecuniary obligations with intent to appropriate the same to his own use.

Third Count. Was a person employed in one of the departments of the postal service of the U. S. * * * unlawfully and wrongfully did secrete and embezzle a certain letter which came into his possession and which was intended to be carried by a letter carrier * * * and "contained five pecuniary obligations and securities of the government of the U. S." which were "the property of one Angus M. Smith;"

"Which said letter and said pecuniary obligations * * * were * * * enclosed in an envelope and addressed Miss Phoebe Havens, No. 306 South Moulton St., Detroit, Mich."

Fourth Count. Was a person employed in one of the departments of the postal service of the U. S., and unlawfully and

wrongfully did steal and take out of a certain letter which had come into his possession * * * certain pecuniary obligations" * * * which "were the property of one Angus M. Smith, and were enclosed with said letter in an envelope," addressed Miss Phoebe Havens, No. 306 South Moulton St., Detroit, Mich., "that neither said letter nor said pecuniary obligations * * * had been delivered to the party to whom it was directed," and that said Charles Wight did wrongfully and unlawfully steal and take said pecuniary obligations with intent then and there to appropriate the same to his own use.

Fifth Count. "Was a person employed in one of the postal departments of the U. S. * * * unlawfully and wrongfully did secrete and embezzle a certain letter which came into his possession in the regular course of his official duties, and which was intended to be carried by a letter carrier, and which contained obligations and securities of the U. S., the property of one Angus M. Smith, which letter and pecuniary obligations were enclosed in an envelope addressed Asa P. Jones, Crescent, York County, Mich., Maple Leaf Township.

It will be seen that the second and fourth counts are the only ones which negative the proviso that the letter had not been delivered to the party to whom it was directed; and under the ruling in U. S. v. Taylor, 1 Hughes, 514, and the case in 15 Grattan, these counts are bad.

In addition to this objection, the second count omits any allegation that the letter mentioned therein was intended to be conveyed by mail. This is a fatal omission.

U. S. v. Rapp, 30 Fed. Rep., p. 821.

The sixth count is utterly bad. It contains no allegation that the letter described in it was intended to be conveyed by mail; but, on the contrary, alleges that it was intended to be delivered by Charles Wight, who was alleged to be assistant to the superintendent of letter carriers in the post office at Detroit, to Charles Swan, the superintendent of letter carriers in said post office.

The second and fourth counts are the only ones which negative the proviso in the statute, but they do not allege that the letter was intended to be conveyed by mail, and are therefore fatally defective.

U. S. v. Matthews, 35 Fed. Rep., 890.
U. S. v. Denicke, 35 Fed. Rep., 407.
U. S. v. Rapp, 30 Fed. Rep., 818.

The fourth count is open to the additional objection that it fails to charge that the letter came into respondent's possession in the regular course of his official duties.

On the trial it was suggested that the counts of the indictment under the last clause of the section might be sustained on the ground that the letter out of which the taking or stealing of, or money, etc., was charged, need not be a letter which was "intended to be conveyed by mail or carried," etc.

But a careful reading of the section will at once demonstrate to the contrary, for it distinctly and expressly provides, "that the same" (meaning the letter) "shall not have been delivered to the party to whom it is directed."

These words exclude beyond a possibility the claim that the letter is one which need not be intended to be conveyed by mail or carried, etc.

U. S. v. Rapp, 30 Fed. Rep., 816; read p. 821.

Under the ordinary rules of construction, the statute should be so read, and in this case *a fortiori*, because every doubt must be solved in favor of the defendant.

Again, apart from a literal construction of the words of the section, it is absolutely necessary to charge that the letter must be one which was intended to be conveyed by mail, in order to give the U. S. Courts jurisdiction. They cannot try cases of simple larceny under this section.

U. S. v. Taylor, 37 Fed. Rep., p. 201.

Unless the letter is intended to be conveyed by mail and is still "mail matter," that is, has not been delivered to the person to whom it was addressed, the Federal Court has no jurisdiction.

II.

Irrespective of the question of the insufficiency of the indictment, the testimony for the government did not tend to prove any offense against the United States.

This evidence appears *in extenso* in the certificate of the Judges in the nature of a bill of exceptions, showing the pro-

ceedings on the hearing of the petition of the appellant. (Record, pp. 25 to 48.)

That this Court will, upon *habeas corpus*, examine the testimony under which a person has been convicted, sufficiently to determine whether there was any evidence tending to prove an offense of which the Court below had jurisdiction, is settled by the case of

Cuddy Pet'r, 131 U. S., p. 286.

There it was held that the petitioner might have alleged facts which indicated that the misbehavior with which he was charged was not such as rendered him liable to fine and imprisonment, and that if he had done so he would have been entitled to a writ, and upon proving such facts to have been discharged.

In the case at bar the appellant only asks, that the Court examine the testimony on which he was convicted, insisting that such examination will satisfy the Court, that the Court below had no jurisdiction over his case.

The duties of the appellant so far as they are material in this case were to sort and place in the proper receptacle in the post office, letters which did not go directly to carriers because of imperfect addresses. To a certain extent, he had charge of the Nixes basket, or receptacle for letters which are imperfectly or incorrectly addressed. All of the supposed letters described in the indictment came to the table or were put into the receptacle of which it was the duty of the respondent to examine the contents, in pursuance of a plan of the detective Smith to decoy the respondent; and it was the understanding that if any of the said letters should pass through the hands of the respondent, they should be retained by the Superintendent of Mails, Mr. Swan, and be returned to the detective, Smith. The last count in the indictment charges the facts according to such plan.

The evidence shows that the letters which the petitioner was charged with having embezzled, and out of which he was charged with having stolen valuable things were false and spurious, addressed to fictitious persons, directed to non-existing places of delivery and were written by the government detective who, together with one of the employes of the Detroit post office put them into letter boxes near the post office in said city of Detroit under an arrangement with the post office authorities of Detroit that said letters should be taken up after they had passed

through the defendant's hands and be by the employes in the post office returned to the detective who mailed them. They were not to go through the mail in the ordinary course.

In each of said letters said detective enclosed money in such a way that it was quite apparent that the envelope contained money, and according to his own testimony, they were purposely made up by him in this form so as to attract the attention of the employes, through whose hands they should pass to this fact with a view to tempt the employes to take them. It also appears that the letters which the defendant was charged with having taken were but three out of over seventy similar letters which the same detective within two months had sent through the Detroit post office under a similar arrangement with the post office authorities. (Record, pp. 25 to 48.)

The appellant contends that under these circumstances, there could be no legal conviction, because:

First. The letters were not "intended to be conveyed by mail, or carried or delivered by any mail carrier or messenger * * * * or other person employed in any department of the postal service."

Second. That the notes or other pecuniary obligations of the government, alleged to have been stolen, were not in any letter intended to be conveyed by mail, etc.

It being conceded that the letters were spurious and fictitious, and no person being in existence to whom they could be written or sent, and that they were addressed to places which had no existence in fact, and put into the post office under an arrangement that they should not be conveyed by mail in the regular course, but intercepted by the superintendent of mails, the District Court had no jurisdiction, and its sentence of the appellant was void.

The case falls fully within the decision of United States vs. Mathews, 35 Fed. Rep. (Oct. 16), p. 890, opinion by Harlan, J., the facts of which case are identical with the claim of the prosecution in this case. This decision, although an oral one, is evidently carefully considered. The learned Justice says (foot of p. 893):

"It is not made by section 5467 an offense against the United States for one who happens to be in the postal service to secrete, embezzle, or destroy a letter intrusted to him or coming into his possession, unless such letter was intended to be conveyed by

mail or carried or delivered by some one employed in the postal service, or forwarded through or delivered from some post office or branch post office established by authority of the Postmaster General, for in such case the letter does not become a part of the mail, and the post office employe in receiving it cannot be said to be in the discharge of any duty imposed upon him by the United States." It is expressly held that the placing of the letter on the dumping table among other letters is not conclusive evidence that the latter was "intended to be conveyed by mail;" and the ultimate fact whether the letter was intended to be conveyed by mail was held to be for the determination of the jury under the evidence and instructions of the Court. The learned Justice defines a letter intended to be conveyed by mail as "one which is entrusted to or comes to the possession of some postal employe, to be transmitted by means of the mail or mail agencies of the United States, to *the person to whom it is addressed.*

The charge of the District Judge in the Mathews case, that if Waidner, the person to whom the letter was directed at Baltimore, was a real person living in Baltimore, recognizes the necessity of an existing person to whom the letter can be delivered. The case of U. S. vs. Denicke, 35 Fed. Rep. (Sept. 4, 1888), p. 407, is directly in point, and refers to the English cases of the Queen vs. Gardiner, 1 Car & K., 628, opinion by Baron Pollock; Queen vs. Rathbone, 2 Moody, Cr. Cas., 242; and the case of U. S. vs. Rapp, 30 Fed. Rep., 818. The latter case is a well considered opinion by Neuman, District Judge.

In this connection, the discussion of decoy letters in U. S. vs. Whittier, 5 Dill., pp. 43-48, is instructive. This was a prosecution under the Act of Congress prohibiting the mailing of obscene books. Defendant wrote the letter charged in the indictment in reply to a fictitious letter sent as a decoy by the post office detective, purporting to be written by a woman. Held, that he could not be convicted.

In the case of Queen vs. Shepard, 29 Law Journal, 1856 (N. S.), Com. Law, 52, an inspector delivered a letter containing marked money, at the window of the outer hall of the general post office, to another inspector, who handed it over to a third, who kept it locked up all night, and on the following morning gave it to a sorter to put in with other letters which the prisoner had to sort. The prisoner secreted the letter, opened it, and the marked money was found on him. The ordinary mode of posting letters at the general postoffice is by putting them in the let-

ter boxes. It was held that this letter was not a post letter within the meaning of the statute, and that the prisoner could only be found guilty of simple larceny or stealing of the money. And in the United States vs. Rapp, it is held that the defendant could not be convicted, either under Revised Statutes Sec. 5467 or Sec. 5469, of embezzling fictitious and spurious letters addressed to non-existent places of delivery.

But upon a broader ground than a mere literal construction of the words of the statute, the respondent should be acquitted. It is the settled policy of the Government to relieve as far as possible from the temptation to take valuable articles from the mails, every employe thereof; and this is a duty which the Government shares with all honest men, for no truly honest man would ever deliberately put unnecessary temptation in the way of another. It is for this reason, quite as much as for the mere safety of the articles of value themselves, that the various postal regulations holding out inducements to parties transmitting money by mail, to send it either by postal order or by postal notes, have been enacted. It is manifestly inconsistent with this purpose to permit the detectives of the post office department, by the use of spurious and fictitious decoy letters which it is previously arranged with the post office shall not go through the regular course of the mail to subject the employes of the department to temptations which, in the regular course of their duties, they would not encounter. Such a practice ought not to be and cannot be approved by the Courts as a means of securing conviction for an act, the commission of which the agent of the Government has succeeded in bringing about.

The case at bar furnishes an extreme illustration of the wickedness of such a practice. A trusted employe of the post office, bearing a high reputation of many years standing for strict integrity, is subjected in the short space of two months to a succession of carefully planned artifices by seventy spurious letters, *filled with money so arranged as to obtrude its presence on the person handling them*, addressed to places which have no existence, and to persons not in being, and which it is intended he shall know cannot be delivered, and therefore not likely to be missed if taken. By a previous arrangement none of the letters are to go *through the mail*. Their sole object is to tempt the employe. If they fail in this they are to be handed back to the detective. It results that the employe succumbs to the temptation, and he is found with one of the letters upon his person.

The post office detective has succeeded in tempting him to wrongdoing, just as he intended, and that is all he has succeeded in doing, for there is no logical or legal inference to be drawn from the fact of the taking of these decoy letters, that he has ever taken any actual letters, properly addressed and in the regular course of conveyance by mail. But, as we have said, the detective has succeeded in corrupting a post office employe and in bringing shame and disgrace upon his innocent family; whereas, in the pursuit of his regular employment, he might have continued to old age honest and unsuspected.

Would any father willingly permit his son to go into the employment of the United States post office if he knew that in addition to the temptations in the ordinary course of his duties (which he might think his son well able to withstand) he was to be subjected to all the contrivances which the unscrupulous cunning of a criminal detective could devise to bring about his fall?

The Supreme Court of Michigan, in Saunders vs. The People, 39 Mich., p. 222, has denounced with great vigor, but with as great propriety, such practices, and it refused to sustain the conviction of a defendant for burglary in a case where a detective had been a party to the planning of the crime. That case only differs, if at all, from the present case, in the means employed to induce the commission of the crime, but the principle is the same in each case.

I do not mean to contend that test letters may not be properly used, but they must be actual letters, sent to a person in being, and be intended to go to their destination in the usual and regular course of mail matter.

It is manifest from the language of Mr. Justice Harlan in the case of Mathews that he believed that such a person as Waidner actually existed, for on p. 892 he says: "The bill of exceptions is silent as to whether Waidner was aware of the use of his name, and as to whether he authorized the Inspector or Cowan to receive the letter addressed to him."

And the following remarks of Treat, Justice, in the case of Whittier, 5th Dillon, above cited, pp. 43 and 44, apply with force:

"The sense of indignation against such vocation or conduct should not permit a violation by the courts, of establishing rules of law, nor the countenance of unlawful contrivances to induce or manufacture crime * * * No court should, even to aid in detecting a postal offender, lend its countenance to a violation of

a positive law, or to contrivances for inducing a person to commit a crime. * * * There are legitimate means and jurisdictions where offenses can be tried and punished, and the public weal is best subserved by a rigid adherence thereto as enforced."

Will this Court by holding these letters to be mail matter, countenance and sanction the wrongful contrivances of the detective in this case who endeavored to bring about the commission of a crime in order that he might afterwards detect the unfortunate employe who fell into the trap set for him—who took the money which the detective purposed and planned he should take.

It is not the duty of the Government detective to manufacture crime in order that he may detect it. As well might an officer supply a person with counterfeit money and induce him to pass it so that he might afterwards arrest him for the offense.

The facts in the petitioner's case shock the moral sense if not the sense of justice of every fair minded man.

An officer of the government for sixty days floods the post office of the city of Detroit with false and spurious letters containing money enclosed in such form as to tempt the employes—so made up for that express purpose—addressed to fictitious persons, directed to places which do not exist, arranged to be returned to him before leaving the post office, and as each letter safely comes through the mail, takes out the money, re-incloses it in another similar letter and starts it again on its errand of temptation.

I contend that such a course should not be sanctioned and that such letters cannot rightfully be held to be mail matter.

Congress had no thought of such letters when it used the expression "intended to be conveyed by mail." It meant *bona fide* letters actually sent by one person to another.

In conclusion, if there is a fair doubt whether the act charged in the indictment and established by the evidence was embraced in the criminal prohibition of the statute, that doubt is to be resolved in favor of the accused.

U. S. v. Morris, 14 Pet., 694.
U. S. v. Wiltberger, 5 Wheat., 76.
U. S. v. Sheldon, 2 Wheat., 119.
U. S. v. Clayton, 2 Dill., 219.
37 Fed. Rep., p. 201.

Is there not such a doubt in this case? The decision of Mr. Justice Harlan in U. S. vs. Mathews, of Lord Chief Baron Pollock in Queen vs. Gardner, in the Court of the Queen's Bench, and Queen vs. Rathbone, District Judge Neuman of the Northern District of Georgia in U. S. vs. Rapp, District Judge Speer of the Southern District of Georgia in U. S. vs. Denicke, and the decision of the English Court in Queen vs. Shepard, 25 Law Journal, p. 52, all hold that under the material facts of this case there could be no conviction. I have not been able to find a single carefully considered decision to the contrary in which the defendant was convicted. The cases which may be cited by the District Attorney are reviewed and distinguished in U. S. vs. Rapp above cited. The language of Mr. Justice Harlan, above quoted, by necessary implication excludes fictitious letters. In addition he says, "All of the decoy letters if they had not been intercepted by Cowan, as the Inspector had instructed they should be before they reached the carrier, would, *in the usual course, have been delivered to the persons to whom they were addressed.*"

Upon the argument in the Court below, stress was laid on the fact that convictions, except for the taking of decoy letters, were extremely rare, and the inference seemed to be that, therefore, the Court must hold that spurious letters to fictitious addresses, and which were to be intercepted, were within the statute.

It seems to me that the sophistry of such an argument is apparent. It is plainly illogical. If spurious letters are not within the statute, then it matters not how many actual convictions have been based upon them, for *no legal conviction* has been had. In short, it begs the question.

Legally, it is clearly wrong in principle. It substitutes for the important and sacred function of the Judge to administer justice, that of securing a conviction at all hazards.

What would be thought of a Judge who announced from the bench that he would not interpret a statute according to its fair meaning, but would so construe it as to insure conviction under it? Is it not quite as bad if he decides that in making up his mind as to the true meaning of a statute he will be governed by the ease with which convictions could be had under a given construction.

The law is directly opposite to this view. If there is any reasonable interpretation of the statute which is consistent with

the innocence of the accused, he is entitled to the benefit of that interpretation.

III.

The petitioner was sentenced by the District Court, when in law and in fact his cause was then pending in the Circuit Court. I do not think there can be any question of the right of the District Court to remit the indictment against the petitioner into the Circuit Court under,

Section 1038, U. S. Rev. Statutes,

notwithstanding the fact that he had been previously found guilty by the verdict of a jury in the District Court. The language of the section is:

"Any District Court may by an order entered on its minutes remit any indictment pending therein to the next session of the Circuit Court for the same District, when in the opinion of such District Court difficult and important questions of law are involved in the case, and thereupon the proceedings in such case shall be the same in the Circuit Court as if such indictment had been originally found and presented therein."

That an indictment is pending in the District Court until a final judgment is entered on the verdict, is within the express language of the statute.

The reason for the statute applies more strongly to a case after verdict than before, for difficult and important questions of law are much more likely to be presented for consideration in a case after a verdict than before one.

The District Court having the power to remit the indictment into the Circuit Court, and having acted under that power, and the cause having been filed in the Circuit Court, the District Court lost jurisdiction of the cause, and by no act of its own could the same be returned to it.

The subsequent order therefore of the District Court denying the motion for a new trial, vacating the order remitting the cause into the Circuit Court, and sentencing the prisoner, was without jurisdiction and void. This judgment of the District Court is the one under which the petitioner is imprisoned and of which he

complains. Upon the hearing in the Circuit Court this was conceded, but an order was entered changing the record, and upon the entry of this order the writ was discharged and the petitioner was remanded.

IV.

The entry of the *nunc pro tunc* order on the hearing of the petition for *habeas corpus*, amending the record of the Circuit Court, was without jurisdiction and void. Its sole purpose was to attempt to validate a sentence already partly executed, which upon the record as it stood was clearly illegal.

There are several fatal objections to its validity.

First. The Court could not after the term at which the petitioner was sentenced, change the terms of the order and judgment sentencing him.

As stated in—

Jenkins vs. Eldredge, 1 Woodb. & Minot, p. 61,

"Nothing can be done which goes to its, (the judgment), merits, or to the principles or orders themselves that have been made by the Court."

And in—

Brush vs. Robbins, 3 McLean, 486.

"That which entered into the consideration of the Court and constitutes a part of the judgment, cannot be changed after the term."

In Assignees of *Medford vs. Dorsey*, 2 Wash., 433, it was held that a judgment which had been improvidently entered, could not be permitted to be amended at a subsequent term.

So also—

Taylor vs. Starr., 2 Root (Conn.)
Harbor vs. Pacific R. R. Co., 32, Mo., p. 423.

In *Harrison vs. State of Missouri*, 10 Mo., 686, it was held that the Court had no power or jurisdiction at a subsequent term to revise its proceedings of the preceeding term, so as to give validity to them.

In *Siebald vs. The U. S.*, 12 Pet. 491, the Supreme Court held "that no change or modification (in the judgment) can be made which may substantially vary or effect it in any material thing."

These objections are not answered by the claim that the amended order is entered in the Circuit Court. The sole purpose and intention of the amendment is to give jurisdiction to a judgment of the District Court by an order of the Circuit Court, and thereby change the grounds of the judgment in the District Court, or give it validity for reasons other than and inconsistent with those stated in the judgment itself.

And the Circuit Court could not lawfully, after the filing of a petition for *habeas corpus*, and the return thereon at the hearing, amend the record in the criminal cause upon its own unaided recollection by adding an order to validate an illegal sentence. If so then a Court can impose an illegal sentence and upon the hearing of a writ of *habeas corpus* can upon its mere recollection enter an order *nunc pro tunc* amending the sentence and remand the prisoner.

Secondly. The Court had no authority to make the order *nunc pro tunc* upon its own unaided recollection. There must be some entry or memorandum made at the time to authorize the order.

Hyde vs. Curling, 10 Mo., 359.

Thirdly. The *nunc pro tunc* order according to its terms is made because the District Court had no power to remit the case into the Circuit Court after verdict. This is erroneous.

The District Court had full power to remit the indictment into the Circuit Court after the verdict. The order of the Circuit Court remitting the case back into the District Court, was jurisdictional, and its validity will be considered upon a writ of *habeas corpus*.

Because if this order of the Circuit Court is without jurisdiction then the petitioner has been sentenced by a court which had no authority to pass sentence on him.

into confinement in the Detroit House of Correction, where he now is, bail having been refused him pending the decision of this cause.

3. For the reasons more fully set forth in the petition heretofore filed in this court by the appellant in this cause, for leave to file a petition for *habeas corpus*, to which the appellant herein prays leave to refer.

This motion is based upon a copy of the record in this cause and the aforesaid petition.

HENRY M. DUFFIELD,
Attorney for Appellant.

Service of notice of the foregoing motion and the accompanying brief in support thereof is hereby accepted—Dec. 5th, 1889.

C. P. BLACK,
U. S. Dist. Att'y.

BRIEF.

The appellant in this cause presented to one of the associate justices in this court in June last, his petition for a writ of *habeas corpus*. The learned Justice directed that it be filed in the Circuit Court of the United States for the Eastern District of Michigan and that a rule issue thereupon upon the Superintendent of the Detroit House of Correction, to show cause why a writ of *habeas corpus* should not issue. After a very considerable delay, the appellant in this cause obtained a hearing upon his petition. It was substantially admitted by the court, that upon the re-

cord of the sentence of the appellant as it stood, up to the day of the hearing on his petition for a writ of *habeas corpus*, the appellant was entitled to be discharged for the reason that the United States District Court for the Eastern District of Michigan had no jurisdiction over the cause when the sentence was passed.

But thereupon an order *nunc pro tunc* was entered (as the appellant contends without authority of law) changing the record; and thereupon the appellant was remanded to the custody of the Superintendent of the Detroit House of Correction where he still remains, at the date of the making of this motion; more than four months having passed since the appellant filed the petition for a writ of *habeas corpus* in this matter and under the rule adopted by this honorable court, he is not entitled to bail.

On the first motion day of this term, the appellant presented to this court an original petition for a writ of *habeas corpus*, which is printed and on the files of the court, setting forth the facts contained in the record of this appeal, and prayed leave to file the same. The court declined to grant such leave but retained the petition until the hearing of this appeal. It is respectfully submitted that for these reasons the motion to advance this cause should be granted, and as early a day as practical assigned for the hearing of the cause.

HENRY M. DUFFIELD,
Attorney for Appellant.

Supreme Court U. S.
FILED.
JAN 9 1890
JAMES H. MCKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

CHARLES H. WIGHT, APPELLANT,
vs.
JOSEPH H. NICHOLSON, SUPERINTENDENT of the Detroit House of Correction. } No. 1521.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT.

By reason of sickness I have been unable to prepare a brief for the printer in the above case, and hence adopt and submit the able argument of the attorney for the United States below, which seems to fully cover the points.

For fear, however, that it might be overlooked, I wish to call the attention of the court to the fact that the order appearing in the record on pages 49 and 50 should be

read as if appearing on page 23 (at the top of the page), just before the order there given.

This is plainly indicated by the dates and purposes of the two orders.

O. W. CHAPMAN,
Solicitor-General.

BRIEF OF ARGUMENT.

I.

THE COURT BELOW PROPERLY CORRECTED THE RECORD.

In this case, after the defendant was convicted in the district court, on motion of the defendant for a new trial and in arrest of judgment, after argument in the district court, the district judge certified the case to the circuit court for re-argument. The case was argued at the March term, 1889, and at the time of the court's announcing its opinion, in which it overruled the motion for new trial and in arrest of judgment, the circuit judge made an order remanding the case to the district court, and the district judge afterwards sentenced the defendant to the house of correction. It appears that the clerk of the circuit court omitted to enter the order remanding the case to the district court. The district attorney at a subsequent term moved the court to correct the record by supplying the omitted order remanding to the district court. It seems that there is no question but what the court may, at a subsequent term, correct the record so that it shall conform to the facts, at least when the effect

of such correction is not to set aside judgment or vacate orders before made. There seems to be no dispute upon the question of correcting the record according to the facts as the court remembers them. This may be done even though the correction of the record give jurisdiction to the court. This is illustrated in many criminal cases where the record failed to disclose the fact that the indictment was returned by a grand jury, which record is necessary to give the court jurisdiction to try the case.

In the case of *Gardner* vs. *The People*, 20 Ill., p. 430, the court said: "It is necessary to give the court jurisdiction that the record should show that the indictment was returned into court by a grand jury." (See also 59 Ill., p. 68.)

Without such a record there is nothing for the jury to try. (*Johnson* vs. *People*, 22 Ill., 314.)

It is unnecessary to cite the many cases in which such corrections have been made, but a few may be necessary.

In the case of *Green* vs. *The State*, 19 Ark., 189, the record did not show that the indictment had been returned into court by a grand jury. The Supreme Court ruled that if the grand jury had, in point of fact, returned the indictment into court as required by law, the trial court may, by a *nunc pro tunc* entry, make its record show the fact. The court further added that the prisoner must have an opportunity to be present in the circuit court when the court acts upon the matter of amending the record.

The court made an order that the sheriff take the prisoner from the penitentiary and have him present at the time.

In the case of *The State* vs. *Clark*, 18 Mo., 432, the court permitted, at a subsequent term, the clerk to enter upon an indictment the day it was filed in a former term. The Supreme Court held that there was no doubt about the right of a court to make *nunc pro tunc* orders on the record in furtherance of justice. (See also *Hyde* vs. *Curling*, 10 Mo., 359.)

In the case of *The State* vs. *Price*, 14 Ind., p. 426, the Supreme Court of that State ruled that a mandamus would lie to the trial court to correct its record *nunc pro tunc* as to the entry of the return of the indictment by the grand jury.

In the case of *Galloway* vs. *McKitten*, 5 Iredell, p. 12, the Supreme Court of North Carolina held that the county court had the right and should amend any omission in the record which had taken place at a *previous term by any act of the clerk or court*, and when the record was thus amended it stood as if it never had been defective.

In the case of *Lothrop* vs. *Page*, 26 Me., 119, the court held that every court of record has the power over its own records and proceedings to make them conform to its own sense of justice and truth so long as they remain incomplete and until final judgment has been entered. The power to vacate a final judgment, irregularly entered at a former term, has also been asserted and exercised.

In the case of *Nelson* vs. *Parker & Stewart*, 3 McLean, 379, the court held that at common law the court can give leave to amend the record where there is something to amend by, and continues: "*Anciently*, amendments were required to be *made at the term at which the error occurred*,

but now an amendment can be made before judgment, *and in some cases after judgment.*"

The cases which the court here refers to, in which the record can be amended after judgment, are without doubt such as where clerical errors had prevented it from showing just what the facts were.

In the case of *Robinson* vs. *The State*, 7 Southwestern Rep. (Texas), 530, where the record erroneously showed that the defendant was convicted of forgery, when in fact he had been convicted of passing a forged instrument, on appeal the court of appeals of Texas corrected the record to conform to the facts.

The right to enter a *nunc pro tunc* order correcting the record was very carefully and elaborately considered in a capital case—that of *Bellansky* vs. *The State*, 3 Minn., 427.

The court in this case reviewed all of the authorities, both ancient and modern, and announced that the trial court had power to amend the record even in a capital case so as to make it conform to the truth *after the term had elapsed in which the record was made up, where there was no doubt what the truth was.*

Upon this question see section 1160, Bishop's Crim. Pro., 2d Ed., and cases there cited.

II.

THE CONVICTION WAS RIGHT.

The indictment in this case charges offenses under two parts of the statute (section 5467 of the Revised Stat-

utes); first, embezzlement and secreting of four distinct letters (see counts 1, 3, 5, and 6); second, stealing and taking valuable inclosures out of three letters (counts 2, 4, and 7).

Under the first, third, fifth, and sixth counts it is necessary under the statute that the letter should be intended to be conveyed by mail, or carried or delivered by a mail carrier, mail messenger, route agent, letter carrier, or other person employed in the postal service, or forwarded through or delivered from a post-office.

Under the second, fourth, and seventh counts it is only necessary that letters should have come into the defendant's possession in any manner whatsoever, and that they should not have been delivered to the person to whom they were addressed.

A.

AS TO TEST CASES.

The letters on which this indictment is based are what are ordinarily called test letters, prepared by a post-office inspector and addressed to fictitious addresses, with the intent that, should they pass through the mails in safety, they should be delivered again to the inspector, who assumes for the time being the names to which he has directed the letters.

With the exception of one case (*United States* vs. *Dennicke*) the authorities are unanimous that a test letter sent to a fictitious address is within the protection of the statute, and that such a letter addressed by any inspector to a fictitious person is a letter intended to be conveyed by mail, and that its embezzlement will sustain an indictment.

Such a letter fully meets the definition of the statute. It can be claimed by and delivered to the sender at the office of destination. Such is the intent of the sender when he mails it. He adopts for the time the name to which he addresses the letter. He intends to call for it and receive it at the office of destination in case it passes through the mail safely, and sends the letter as a test, intending to watch its transit through the mails. This does not change its character as a letter intended to be sent by mail. (*United States* vs. *Cottingham*, 2 Blatchf., 470; *United States* vs. *Whittier*, 5 Dillon, 35; *United States* vs. *Foye*, 1 Curtis, 366; *Bates* vs. *United States*, 10 Fed. Rep., 92; *United States* vs. *Matthews*, 35 Fed. Rep., 890; *Regina* vs. *Young*, 1 Dennison C. C., 198; *Queen* vs. *Shepherd*, 25 L. J. (N. S.), 52. Williams and Crosswell, J. J.)

The defendant may cite the cases of *United States* vs. *Rapp*, 30 Fed. Rep., 818; *Regina* vs. *Gardner*, 1 Carr & K., 628; *Queen* vs. *Shepherd*, 25 L. J. (N. S.), 52, and *United States* vs. *Matthews*, 35 Fed. Rep., 890, to contradict the doctrine claimed above, but the dictum of Pollock, C. B., in *Regina* vs. *Gardner*, has been distinctly overruled in *Regina* vs. *Young*, in which Pollock, C. B., sitting, all the judges were unanimous that the doctrine claimed by the Government is law. None of the other cases are in point against the United States in this cause.

In *United States* vs. *Rapp*, 30 Fed. Rep., 818, the "test" was a "nix," addressed to a fictitious post-office. Under the then existing postal regulations it was the defendant's duty to open such packages, and if any valuable articles were found therein to deliver them to the "nixes" clerk.

The defendant, instead, opened the package and appropriated the valuable contents. In the first place the defendant could not be held guilty of embezzlement of the letter or of unlawfully opening the letter, as he didn't embezzle the letter and it was his duty to open it. In the second place, the letter was not mail matter, as it did not get into the post-office in the ordinary manner, being merely placed in the defendant's mail by an officer, and never having been regularly mailed, and being addressed to a fictitious post-office, and not mailed in such a manner that it could be carried or delivered by a carrier, it could in no sense come within the statute.

But the court expressly holds that, although it was a test letter, if it had got into the mails in some one of the ordinary ways provided by the authorities the indictment would have been sustained. The court does not pass on the latter part of the statute, which punishes the stealing of the contents of a letter.

In *Queen* vs. *Shepherd*, 25 L. J. (N. S.), 52, the letter did not get into the mails in any of the ordinary ways, but passed through the hands of several of the post-office inspectors, and was finally given to a sorter, who put it into defendant's mail. The ordinary method of posting letters is to put them into the letter-boxes. It not appearing that any of the inspectors were authorized by the course of their official duties to receive and keep the letter as they did, it was held that the letter did not come within the statute; but the court expressly held, as in *Queen* vs. *Young* and *United States* vs. *Rapp*, that, although the letter was merely a test letter, it was within the protection of the statute, and if it had got into the mails in any

of the ordinary methods would have sustained the indictment. (See remarks of Williams and Crosswell, J. J.)

In *United States* vs. *Matthews*, 35 Fed. Rep., 890, the defendant was indicted for embezzling, secreting, and destroying a letter containing a valuable inclosure; and also for stealing and taking such inclosures out of a letter. He was convicted of the first charge and acquitted of the latter; consequently Mr. Justice Harlan, who rendered the decision, passed merely upon the first part of the statute.

The facts in the case were as follows:

The accused was a substitute clerk in the post-office at Baltimore, whose duty it was to back letters with the date of their being received in the office. The course of business was to empty all mail pouches, together with the letters for the city of Baltimore collected from the street boxes and the various receptacles at the post-office, upon the dumping table, from which they were transferred to the canceling or backing table, to be canceled or backed, then to be collected and taken to the files for distribution. Five test or decoy letters, with stamps canceled, were given by the inspector to a postal clerk, Cowan, who, according to his instructions, took them inside the post-office and put them on the dumping table among a number of letters already there regularly, whence he transferred them with the rest of the letters to the backing table where the accused was working. The latter backed all the letters, including the decoys. They were then all collected and taken to the carriers' files, where they were intercepted by the clerk, Cowan, according to his instructions, and taken to the inspector. The next day the same plan was pursued with three other test letters, but the accused took one,

went out with it, and stole its contents. On account of some technical defense he was acquitted of the stealing, but was convicted of the embezzlement.

The point was raised on the trial whether the letters were intended to be conveyed by mail or carried or delivered by a letter-carrier, etc., but the court refused to let the question go to the jury, stating that, if the letter was deposited in the post-office at Baltimore, and that the addressee was a real person there, under the law the letter was intended to be conveyed by mail, holding in effect that section 5468 of the Revised Statutes makes the fact that a letter has been placed in charge of any employé of the postal department *conclusive* evidence that it was "intended to be conveyed by mail." The statute, in fact, makes this merely *evidence* that it was "intended to be conveyed by mail," and Mr. Justice Harlan, in deciding the case, held only that there was evidence to go to the jury on this fact, and that under the evidence the point should have been left to the jury.

Mr. Justice Harlan expressly decides (see page 896) that decoy letters are proper means for ferreting out dishonest officials, and that they are within the protection of the statute.

B.

DO THE LETTERS IN THIS CASE COME WITHIN THE STATUTE?

As to the fact whether or not the letter in the case of *United States* vs. *Matthews* was "intended to be conveyed by mail," Mr. Justice Harlan says (see page 894) "a letter intended to be conveyed by mail is one which is in-

trusted to, or comes to the possession of, some postal employé to be transmitted, by means of the mail or mail agencies of the United States, to the person to whom, *under whatever name*, it is addressed; or, which is the same thing, to some person authorized to receive it from the mail *before or after* it reaches the particular place to which it is directed," and holds that "it can not be that a letter is intended to be conveyed by mail, within the meaning of the statute, when the postal authorities, acting in co-operation with the sender, intend, after the letter is put in the mail, to resume possession of it themselves, or to permit the sender to do so, *before it reaches the hands of any carrier, messenger, or other employé*, for delivery to the proper person."

It makes no difference under this decision that it was intended to intercept the letter before it reached its destination, provided the letter got into the mails in any proper and ordinary way and was not intercepted before it was carried by a letter-carrier, or reached the hands of any employé, not knowingly acting in co-operation with the inspector, to do any one of the things necessary for its delivery.

Indeed, Mr. Justice Harlan expressly agrees with Mr. Justice Curtis's decision in *United States* vs. *Foye* (1 Curtis, 364) above referred to, in which case the letter was addressed to Ipswich, but was to be intercepted and returned to the sender if it reached Newburyport, an intermediate station, in safety.

Consequently, it is certainly established by the authorities, and it is a matter of common sense also, that an inspector may mail a letter, addressed to a fictitious address,

with no intention that it shall go to the post-office to which it is directed, and with the intention of having it intercepted and returned to himself if it passes in safety through the hands of the suspected person, and that the embezzlement of such a letter, or the stealing of its contents, is punishable under section 5467 of the Revised Statutes: *Provided*, That the letter got into the mail in some one of the ordinary methods provided by the postal authorities, or provided (according to *United States* vs. *Foye*, with which decision Mr. Justice Harlan coincides) it is intended to be conveyed by mail, or, *sequitur*, is intended to be carried by a letter-carrier, etc.

With the exception, perhaps, of the letter on which the sixth and seventh counts are based, the letters in this case all got into the mails in the ordinary manner provided by the postal authorities, being placed by the inspector in ordinary letter-boxes provided for the reception of letters, and without the knowledge or co-operation of any of the carriers on whose routes they were mailed. They were not only "intended to be carried by a letter-carrier," *they were carried by a letter-carrier*, and were delivered at the post-office in the ordinary way along with other mail collected at the same time. They came into the hands of the defendant just as any other mail would come, and were embezzled by him just as he would have embezzled any other letters, which he had good reason to believe contained money.

C.

FIRST, SECOND, AND FIFTH COUNTS.

The letters mentioned in the first, second, and fifth counts were addressed not only to fictitious names, which

the post-office inspector assumed for the time, but also to fictitious post-offices; but this can make no difference, as the defendant's duty was plain, as they came into his possession in the ordinary manner, and as they were not only "intended to be carried by a letter-carrier," but actually *were carried by a letter-carrier.*

Moreover, the case of *United States* vs. *Foye* (which is in the line of all the other authorities and with which Mr. Justice Harlan agrees) decides that so long as a letter is intended to be conveyed by mail, it need not be intended to be conveyed to the post-office to which it is directed. This being so, it follows that it is not necessary that the office to which it is directed be actually in existence, so long as the letter is intended to be conveyed by mail or *carried by a letter-carrier.*

D.

THIRD AND FOURTH COUNTS.

The letter, on the embezzlement and the stealing of the contents of which the third and fourth counts are based, was addressed to a post-office actually existing, to wit: Detroit; the name and street are fictitious, but, as shown above, this is immaterial.

E.

SIXTH AND SEVENTH COUNTS.

The letter mentioned in these counts did not get into the mail in the ordinary manner. It was placed in defendant's mail by an employé of the post-office, according to the instructions of Post-Office Inspector Smith. It was the duty of the defendant, as there is no such place in Detroit as that to which the letter is addressed, to make a

search and then deliver the letter to Mr. Swan, the defendant's superior.

Ordinary letters in similar cases Mr. Swan would then forward to the Dead-Letter Office; but in this case his instructions were to return the letter to the sender, Mr. Smith.

The letter does, however, come within the express provisions of the statute, as it was the defendant's duty to *deliver* to Mr. Swan, and such was the intention of the sender.

The statute covers all letters which were "intended to be conveyed by mail or carried or delivered by any mail-carrier * * * or other person employed in any department of the postal service." Hence, the defendant being a person employed in the postal service, and the letter being intended to be carried and delivered by him, its embezzlement is certainly punishable under the statute.

However it may be as to the sixth and seventh counts, the defendant is certainly guilty under the other five counts in the indictment, and his case clearly comes, as to those counts, within the statute.

F.

SECOND, FOURTH, AND SEVENTH COUNTS.

These counts charge the defendant with stealing and taking valuable inclosures out of the letters mentioned.

Even if it should be held—as we confidently anticipate it will not—that the letters do not come within the first part of the statute, which punishes embezzlement, Congress has made a clear distinction in the latter part of the statute, which punishes the stealing of the contents of let-

ters which have come into the possession of any employé of the postal service in any manner whatsoever, whether "intended to be conveyed by mail," etc., or not. It would seem from this distinction that Congress intended to punish the stealing of valuable contents of letters by postal employés, no matter in what manner such letters might get into their possession. As, for instance, if a carrier should pick up a letter on the street or in the corridor of the post-office. His official character would lead people to suppose his actions proper, and would prevent his arrest, and Congress desires to punish him, if he steals the contents of the letter, in order to protect the service and the public.

It appears, then, clearly that the letters in this case contained valuable inclosures; that they got into the mails in the ordinary way; that they were intended to be carried, and were carried, by a letter-carrier in the regular course of his business; that they were under the control of the postal authorities, just as ordinary letters, up to the time they were embezzled and their contents stolen by the defendant; and that they were embezzled, secreted, and destroyed, and their valuable contents stolen and taken by the defendant.

Hence, under all of the authorities, the case is within the protection of the statute, and the indictment is sustained by the proof.

The defendant should therefore have been sentenced.

CHARLES T. WILKINS,
Attorney for United States.